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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

ADOPTION

STATE AGENCY: CALIFORNIA PRISON HEALTHCARE SERVICES
 MULTI-COUNTY: NONE

AMENDMENT

STATE AGENCY: NONE
 MULTI-COUNTY: NORTH KERN-SOUTH TULARE HOSPITAL DISTRICT

A written comment period has been established commencing on **January 2, 2009**, and closing on **February 16, 2009**. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300,

which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **February 16, 2009**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Ivy Branaman, Fair

Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend Article 7.6 entitled "Participation in Risk Pools" in Title 2 of the California Code of Regulations. Sections 588.1 and 588.2 would be amended. This proposed regulatory action pertains to the participation of contracting agencies, including county offices of education, school districts and community college districts, in risk pools for retirement purposes.

II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on February 16, 2009. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via facsimile at (916) 795-4607; e-mail at joe_parilo@calpers.ca.gov; or mailed to the following address:

Joe Parilo, Acting Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, California 94229-2702
Telephone: (916) 795-3484

III. PUBLIC HEARING

Comments on the proposed actions will also be taken at a public hearing to be placed on the agenda of the regularly scheduled meeting of the Benefits and Program Administration Committee of the CalPERS Board:

March 17, 2009
9:00 a.m.
California Public Employees' Retirement System
Lincoln Plaza North, Auditorium
400 Q Street
Sacramento, California 95811

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The CalPERS Board has general authority to take regulatory action under Government Code section 20121. The Board has specific authority to amend sections 588.1 and 588.2 under Government Code section 20840. This action would implement, interpret and make specific Government Code section 20840.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Since 2003, the Board has had authority to create, combine or eliminate risk pools for local miscellaneous and local safety members. The Board may establish by regulations, the criteria under which contracting agencies, including school employers that choose to contract as public agency employers, may participate in risk pools.

Beginning with the June 30, 2003 actuarial valuations, plans with less than 100 active members have been mandated into risk pools based on their benefit formula and membership category. There are currently 10 public agency risk pools.

Changes to section 588.1 are being proposed to clarify the effective date for employee benefits mandated by risk pooling for both new and existing contracting agencies entering a risk pool.

Changes to section 588.2 are being proposed to modify the criteria under which contracting agencies with less than 100 employees may participate in a risk pool. The proposed amendment to section 588.2 would authorize staff to place a new contracting agency in an individual non-pooled plan rather than in a risk pool if

CalPERS actuarial staff deem it necessary to protect pooled employers from potential unfavorable additional costs attributable to new contracting agencies.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to public agency participation in risk pools.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose a mandate on local agencies or school districts.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action does not impact costs or savings for any state agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500 et seq.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action does not impact any federal funding to the state.
- F. **ADVERSE ECONOMIC IMPACT:** CalPERS has made an initial determination that the proposed regulatory actions will not have a significant statewide adverse economic impact directly affecting businesses including the ability of business in California to compete with business in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** The CalPERS is not aware of any cost impacts that a representative private person, or business would necessarily incur in reasonable compliance with the proposed action.

H. **IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA:** The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no significant effect on housing costs.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the above mentioned hearing or during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Jean Fannjiang
Actuarial Office
California Public Employees' Retirement System
400 Q Street
P.O. Box 942701
Sacramento, California 94229-2701

Telephone: (916) 795-2475
Fax: (916) 795-2744
E-mail: Jean_Fannjiang@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Joe Parilo, Acting Regulations Coordinator, at the address shown in Section II, or (916) 795-3484 (joe_parilo@calpers.ca.gov).

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Acting Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the pro-

posed text and the ISOR is available at no charge upon telephone or written request to the Acting Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Joe Pariolo, Acting Regulations Coordinator, at the address shown in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' web site at www.calpers.ca.gov under *About CalPERS > Legislation, Regulations & Statutes > Regulatory Actions > Current Regulatory Actions*.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the amendment on regulations after the public comment period has closed. It may amend sections 588.1 and 588.2 as modified if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

TITLE 2. STATE COMPENSATION INSURANCE FUND

NOTICE OF INTENTION TO AMEND A CONFLICT-OF-INTEREST CODE

December 23, 2008

NOTICE IS HEREBY GIVEN that the State Compensation Insurance Fund intends to ask the Fair Political Practices Commission to amend the State Fund's Conflict-of-Interest Code pursuant to Government Code Section 87300 and 87306. Pursuant to Government Code Section 87302, the code will designate employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

A written comment period has been established commencing on January 2, 2009 and terminating on February 16, 2009. Any interested person may present written comments concerning the proposed code no later than February 16, 2009 to the State Compensation Insurance Fund. No public hearing on this matter will be held unless any interested person or his or her representative requests a public hearing no later than 15 days prior to the close of the written comment period.

State Compensation Insurance Fund has prepared this written explanation of the reasons for the designations and the disclosure responsibilities and has available all of the information upon which its proposal is based.

The proposed amendment will reflect the addition of designated employees for the executive and staff and designated employees of the different programs as a result of the organization's workforce restructuring and functional realignment. The amendment will also feature the revisions to the disclosure categories.

Copies of the proposed code and all of the information upon which it is based may be obtained from the State Compensation Insurance Fund at 1275 Market Street, San Francisco, CA 94103. Any inquiries concerning the proposed code should be directed to:

Joseph E. Gershaneck, Assistant HR Manager,
Filing Officer
(415) 565-1184
jegershaneck@scif.com

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

NOTICE OF PROPOSED RULEMAKING

"Advertising and Merchandising of Alcoholic Beverages"

The California Department of Alcoholic Beverage Control ("Department") proposes to amend the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to amend Section 106 of Title 4, Article 16 of the California Code of Regulations, concerning the advertising and merchandising of alcoholic beverages.

PUBLIC HEARING AND COMMENT PERIOD

The Department has scheduled a public hearing as follows:

- Date and Time: Tuesday, February 17, 2009; 9:00 a.m. – 3:00 p.m.
- Location: Board of Equalization, 450 N Street, Room 121, Sacramento CA 95814
- Purpose: To receive written and/or oral comments about this action

The written comment period will close Tuesday, February 17, 2009 at 5:00 p.m. Any person may submit written comments about the proposed amendments. To be considered by the Department, written comments should be directed to:

Matthew D. Botting, General Counsel
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
Telephone: (916) 419-2500
E mail: matthew.botting@abc.ca.gov
Fax: (916) 419-2599

AUTHORITY AND REFERENCE

Authority for the proposed amendments is provided by Business and Professions Code Sections 23001 and 25750, and California Constitution, Article XX, Section 22.

The proposed amendments implement, interpret, or make specific the following reference citations: Business and Professions Code Sections 25600 and 25611.3.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

(1) Business and Professions Code Section 25600 prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as authorized by the ABC Act (Business and Professions Code Sections 23000, *et seq.*) or by regulations of the Department. With respect to brand identified items given to consumers in connection with the sale or distribution of beer, existing regulation authorizes licensees to only give items that are of inconsequential value, which is defined as costing the licensee giving them away no more than \$0.25 (Section 25600 and Rule 106).

Business and Professions Code Section 25600 has been amended to require that as to beer manufacturers, no rule of the Department shall impose a limit other than

\$3.00. The proposed amendment to the regulation will establish this new limit.

(2) Business and Professions Code Section 25611.1 presently authorizes exterior signs advertising alcoholic beverages only as permitted by the ABC Act (Business and Professions Code Sections 23000, *et seq.*) or regulations of the Department. Department regulation permits any wholesaler to sell or rent exterior signs to a licensed retailer at a price not less than current market price and no such sign is permitted to refer to the retailer's name or business.

Business and Professions Code Section 25611.3 has been added to authorize beer wholesalers to sell or rent exterior signs at no less than cost, as defined in Business and Professions Code Section 17026. The proposed amendment to the regulation will comport with the lower statutory limit.

LOCAL MANDATE

These amendments do not impose a mandate on local agencies or school districts.

IMPACT ON PRIVATE PERSONS/BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON BUSINESS

It is anticipated that the proposed amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Adoption of the proposed amendments will not create or eliminate jobs within California, will not create new businesses or eliminate existing businesses within California, and will not affect the expansion of businesses currently doing business within California.

IMPACT ON SMALL BUSINESSES

It is anticipated that the proposed amendments will not have a significant impact on small businesses. The proposed amendments simply insure that the regulation conforms to the statutory authority and affords licensed businesses to take advantage of the expanded limits provided by amendments to the ABC Act.

SIGNIFICANT EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed regulatory action would not affect housing costs.

COSTS OR SAVINGS TO ANY STATE AGENCY

None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT THAT MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTION 17500-17630

None.

OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

None.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

None.

CONSIDERATION OF ALTERNATIVES

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department's contact person identified above will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained from the Department's contact person identified above at the address stated, or by accessing the Department's website at www.abc.ca.gov. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Department's contact person or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following receipt of public comment, the Department may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date upon which the Department adopts the regulation. Requests for copies of any modified regulation should be sent to the Department's contact person identified above at the address indicated, or may be viewed on the Department's website. The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **February 19, 2009**, at 10:00 a.m.
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland,
California 94612.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **February 19, 2009**, following the Public Meeting, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS

MEETING: On **February 19, 2009**, following the Public Hearing, in the Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD**

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **February 19, 2009**.

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 22
Sections 1637 and 1646
Riding on Rolling Scaffolds

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 22
Sections 1637 and 1646
Riding on Rolling Scaffolds

**INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW**

Existing standards in the Construction Safety Orders (CSO), Section 1646(f) permit employees to ride on a rolling scaffold that is moved by others below provided that all of the provisions in Section 1646(f) are met. The proposed amendments for this rulemaking action are initiated in large part from recommendations submitted to the Occupational Safety and Health Standards Board (Board) by the Technical Services Information Bureau and the Acoustical Industry Advancement Fund (Petitioner) in the Board's Petition File No. 465.

The Petitioner submitted recommendations that would permit, with additional conditions and restrictions, the ability to ride on a rolling scaffold without being moved by others below. The proposal was developed with the assistance of an advisory committee. The Petitioner and other stakeholders emphasize current standards that require a rolling scaffold with a rider on it to be moved by others below is a level of staffing that is rarely available or feasible in operations such as the installation of ceilings.

Notwithstanding existing federal and state OSHA standards that permit riding on a rolling scaffold, scaffold manufacturer's literature and instructions in general have discouraged the practice of riding on a rolling scaffold. Amendments are also proposed for Section 1637(b)(4) to address any differences between the manufacturer's recommendations and the provisions of proposed Section 1646(i) and (j) that pertain to riding on a rolling scaffold platform.

Employers exercising the option to move rolling scaffolds with a rider on the platform under the provisions of proposed Section 1646(j) would have relief from the mandatory requirements that the scaffold be moved by others below in all situations. The Petitioner and statements from a number of stakeholders at the advisory committee indicated that without this proposal, the worker on a rolling scaffold must repeatedly climb up and down the scaffold numerous times during a work

shift to unlock the wheels each time the scaffold is moved, thereby, exposing the worker unnecessarily to potential falls and an onerous fatigue factor.

The proposed amendments for this rulemaking would permit one employee to self-propel (move oneself) while on a rolling scaffold provided that all of the existing requirements for riding on a rolling scaffold are met in combination with additional requirements proposed in the amendments. Additional requirements in the proposal include, but are not limited to, ensuring that the scaffold platform is no more than 4 feet above the floor level, that the scaffold platform is at least 20 inches wide, and that the scaffold is secured from movement when workers are climbing or working on the scaffold.

The proposal also adds several subsections that are consistent with federal OSHA provisions related to riding on mobile scaffolds and relocates several existing subsections for optimal formatting and organization of the standard.

Section 1637. General Requirements.

Section 1637 contains a number of provisions addressing the design, construction and use of all types of scaffolds.

Subsection (b). Scaffold Design and Construction.

Subsection (b)(4).

Existing subsection (b)(4) states that manufactured scaffolds shall be used in accordance with the manufacturer's recommendations. Scaffold manufacturer's literature and instructions in general have discouraged the practice of riding on a rolling scaffold notwithstanding that both federal OSHA and Cal/OSHA standards have long permitted the practice with conditions and restrictions. This may in part be related to the manufacturer's concerns associated with injuries that could occur in the event that employees do not follow the conditions and requirements of OSHA standards.

Therefore, an amendment is proposed for Section 1637(b)(4) for clarity that will have the effect of addressing any differences between the manufacturer's recommendations and the provisions of proposed Section 1646(i) and (j) that pertain to the requirements for riding on a rolling scaffold platform.

Section 1646. Tower Scaffolds and Rolling Scaffolds, Wood or Metal.

Section 1646 contains provisions addressing the design and use of mobile scaffolds including provisions addressing scaffold components such as the uprights, ledgers, ribbons, braces and planking.

Existing subsections (g), (h), and (i) are re-designated as subsections (f), (g) and (h), respectively. These editorial changes are without regulatory effect and are

proposed in order to promote the logical organization of this standard.

Subsection (i). Riding.

Existing subsection (f), redesignated as subsection (i) in the proposal, contains provisions that permit riding on a rolling scaffold moved by others below provided that the conditions of this subsection are met. These conditions include provisions that ensure a safe floor surface that is within 3 degrees of level, free of obstructions and that the minimum scaffold base dimension is at least 1/2 of the scaffold height. Additionally, the conditions specify the type of wheels that must be used.

A new subsection (i)(4) is proposed that requires the manual force used to move the scaffold is to be applied as close to the base as practicable, but not more than 5 feet above the supporting surface of the scaffold. A new subsection (i)(5) is proposed that requires that, before a scaffold is moved, each employee on the scaffold shall be made aware of the move. New subsection (i)(6) is proposed that requires that no employee shall be on any part of the scaffold which extends outward beyond the wheels, casters, or other supports. Proposed subsections (i)(4) through (i)(6) are essentially the same as the federal OSHA counterpart standards in 29 Code of Federal Regulations (CFR) 1926.452(w) that pertain to moving mobile scaffolds. The effect of the amendments is to increase the safety afforded by these provisions and to ensure that the provisions that pertain to riding on rolling scaffolds are at least as effective as the federal standards.

Subsection (j). Riding on a Self-Propelled Scaffold.

A new proposed subsection (j) provides that one employee may ride on and move a rolling scaffold while on the platform without assistance from others below, provided the conditions in this subsection are met.

Proposed subsection (j)(1) requires that all of the provisions in subsection (i) be met, except that the scaffold need not be moved by others below. Proposed subsection (j)(1) has the effect of ensuring that the same conditions, limitations and restrictions required when riding a scaffold moved by others below is afforded to an employee moving the scaffold without assistance (self-propelling).

Proposed subsection (j)(2) requires that the scaffold platform not be more than 4 feet above the floor level. CSO, Section 1621 requires that the unprotected sides of rolling scaffolds be protected by railings when the platform is 7 1/2 feet or more above the ground, floor or level underneath. The effect of proposed subsection (j)(2) is that an employee self-propelling a rolling scaffold is limited to a relatively low working height that would mitigate the possibility of serious injury in the event of a fall.

Proposed subsection (j)(3) provides that the working platform be no less than 20 inches in width with a maximum 1 inch space between platform planks. Scaffold planking units are typically 10 inches nominal in width, meaning that the actual width measurement is slightly less than 10 inches. The maximum 1 inch opening between planking allows for adequate spacing between planking units when the platform does not consist of a single platform unit. The effect of this proposed amendment is to ensure that the scaffold platform is wide enough to provide a safe work area on the platform.

Proposed subsection (j)(4) requires that the wheels or casters of rolling scaffolds be provided with an effective locking device that is used in accordance with subsection (c) of Section 1646, or that rolling scaffolds be provided with an effective device that is used to prevent movement of the scaffold when workers are climbing or working on the scaffold. The effect of this amendment is to ensure that the rolling scaffold is secured from movement when employees are climbing or working on the scaffold.

The intent of this proposal is to address additional provisions related to the manual movement of a rolling scaffold with a rider on the platform. Therefore, the use of powered systems is outside the scope of this proposal. Consequently, proposed subsection (j)(5) would have the effect of prohibiting the use of power systems such as motor vehicles, add-on motors, or battery powered equipment to propel a scaffold.

Subsection (k). Training.

A new proposed subsection (k) would have the effect of requiring that employees who ride on rolling scaffolds and employees that assist in moving employees riding on a rolling scaffold are trained in accordance with applicable standards and that they have the ability to recognize the hazards associated with riding on a rolling scaffold.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment. The existing standard in Section 1646(f), proposed as subsection (i), addresses provisions that permit employees to ride on the platform of a rolling scaffold that is moved by others below, provided all of the conditions in the subsection are met. This proposal adds amendments to proposed subsection (i) that require additional safety procedures to be followed when moving a rolling scaffold but will not require additional equipment or new technologies.

The proposal also adds a new subsection (j) that would allow, with conditions and restrictions, a rolling scaffold to be moved by a rider on the platform without assistance from others. However, the proposal will not mandate the use of new equipment or technology as the employer has the option to move a scaffold in conformance with the provisions of new subsection (j).

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article

XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small business. However, no economic impact is anticipated. The proposal provides procedural requirements that can be addressed by instruction and training. Additionally, the proposal provides the employer another option as to how a rolling scaffold can be moved while one employee is on the platform. Also see the statement under the heading "Specific Technology or Equipment."

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to

the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than February 13, 2009. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on February 19, 2009, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

**TITLE 10. DEPARTMENT OF
INSURANCE**

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**
300 Capitol Mall, 16th Floor
Sacramento, CA 95814

File No. REG-2008-00028

January 2, 2009

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

FREQUENCY AND SEVERITY BANDS MANUAL

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. Notice is hereby given that the Insurance Commissioner (“Commissioner”) proposes to amend Title 10, Chapter 5, Subchapter 4.7, section 2632.9(e) of the California Code of Regulations. The purpose of the regulations, specifically, is to update applicable law in order to incorporate by reference the newest version of the Frequency and Severity Bands Manual. The Frequency and Severity Bands Manual is required to be used, under certain circumstances, when preparing a private passenger automobile class plan in California.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: Friday, February 20 at 10:00 a.m.

**Location: Board Hearing Room
State Board of Equalization
450 N Street, Room 121
Sacramento, CA 95814**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

**PRESENTATION OF WRITTEN
COMMENTS; CONTACT PERSONS**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00

p.m. on February 20, 2009. Please direct all written comments to the following contact person:

Drake Shogun
California Department of Insurance
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Telephone: (916) 492-3500
ShogunD@insurance.ca.gov

Questions regarding the hearing and comments on the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Camilo Pizarro
California Department of Insurance
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Telephone: (916) 492-3500
PizarroC@insurance.ca.gov

**COMMENTS TRANSMITTED BY
E-MAIL OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail sent to the following e-mail address: ShogunD@insurance.ca.gov or PizarroC@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person for this proceeding using the following fax number: (916) 327-3482. **Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, in care of the contact person, at the address listed above, by no later than **5:00 p.m. on February 20, 2009**. Any materials received after that time will not be considered.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Subchapter 4.9, Title 10, California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
45 Fremont Street, 21st Floor
San Francisco, CA 94105
(415) 538-4190

A copy of any written materials submitted to the Public Advisor regarding this rulemaking shall also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt these regulations under the authority of Insurance Code section 1861.02(e). This section specifically authorizes the Commissioner to adopt regulations in order to implement the laws relating to private passenger automobile rates. The proposed regulations are designed to implement, interpret and make specific the manner in which rates and premiums for automobile insurance policies are determined in this State. The Commissioner also proposes to adopt the proposed regulations under the authority of *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, which recognizes an implied delegation of rulemaking authority for those statutes that give an agency the authority to adopt those rules that are necessary for the due and efficient exercise of a power expressly granted by statute.

The proposed regulations will implement, interpret, and make specific Insurance Code sections 1861.02 and 1861.05.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Title 10, California Code of Regulations (“CCR”) sections 2632.5, 2632.8 and 2632.11 were revised in 2006 to implement Insurance Code section 1861.02(a),

which requires that automobile insurance rates and premiums be determined by the application of rating factors in a specified order of importance, or weight. Section 1861.02(a) establishes the order of importance as follows: a driver’s driving safety record must be the most important factor, followed by the driver’s annual miles driven, followed by the number of years of driving experience for the driver, followed by those other optional factors that the Commissioner adopts through regulation.

Among the optional factors adopted by the Commissioner are the factors of relative claims frequency and relative claims severity. (See CCR § 2632.5, subs. (d)(15) & (16).) The frequency and severity factors permit insurers to assign a given insured vehicle to a particular group, or “band,” using either zip code or census tract data. The purpose of grouping zip codes and census tract regions to particular rating bands is to allow the insurer to rate similar risks homogeneously. Prior to the 2006 revisions to the regulations, insurers were permitted to use a maximum of 10 bands for relative claims frequency and a maximum of 10 bands for relative claims severity. As part of the 2006 revisions to the automobile insurance rating factor regulations, the Department expanded these bands from 10 categories each to 20 categories each.

The Department’s regulations contemplate that some insurers may lack sufficient credible data to ascertain the most appropriate rating bands for relative claims frequency and relative claims severity. Thus, CCR section 2632.9(d) permits insurers to use an alternative set of data to develop rating bands for relative claims frequency and relative claims severity. This alternative set of data, developed by the Department, is known as the “Frequency and Severity Bands Manual.”

Currently, CCR section 2632.9(e) incorporates by reference the Frequency and Severity Bands Manual that was filed with the Secretary of State on July 5, 1996 (the “1996 Manual”). The 1996 Manual was developed for the purpose of demonstrating how losses vary by zip code. The 1996 Manual also estimates frequency and severity of claims for zip codes throughout the state.

The Commissioner recognizes, however, that the 1996 Manual contains data that is more than fifteen years old. Moreover, because the 1996 Manual considers zip codes taken from the 1995 U.S. Postal Service (“USPS”) zip code directory, the 1996 Manual does not reflect the revisions to the USPS zip code directory that have taken place over the last decade. Similarly, because the 1996 Manual contemplates 10 rating bands, as opposed to the 20 bands permitted by the 2006 revisions to the automobile rating factor regulations, the utility of the 1996 Manual has diminished.

EFFECT OF PROPOSED ACTION

The purpose of the proposed regulations is to ensure that private passenger automobile insurers will be able to implement the 2006 amendments to the automobile rating factor regulations through the use of updated, credible frequency and severity claims and exposure data that accounts for the fact that insurers may choose to use as many as 20 frequency and 20 severity rating bands.

For these reasons, the Commissioner instructed his staff to develop and publish a new Frequency and Severity Bands Manual that corrects the limitations that exist with respect to the 1996 Manual and aids insurers seeking an alternative credible source for claim frequency and claim severity data. The proposed regulations seek to incorporate by reference the new Frequency and Severity Bands Manual and affirmatively establish the new Manual as the appropriate data source for use in private passenger automobile insurance class plans.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that adoption of the proposed regulations will not have a significant impact on reporting requirements, record-keeping requirements, or other compliance requirements. The Commissioner has made an initial determination that adoption of the proposed regulation will

not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulation simply clarifies and makes specific one computational element of an insurer's optional rating factors. Because automobile insurance is generally written based upon California experience, this regulation does not affect the ability of California insurers to compete with insurers in other states.

The Commissioner has considered various alternatives to the existing and proposed regulation. However, the Commissioner invites comment on proposed alternatives designed to lessen any adverse economic impact on business while ensuring compliance with all applicable legal requirements.

The types of businesses affected by the proposed regulation are insurers transacting automobile insurance in the State of California.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner is not aware of any cost impacts a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Although some insurers may incur additional costs to revise their existing class plans, insurers routinely make and file class plan revisions.

BUSINESS REPORTING REQUIREMENT

The Commissioner finds it is necessary for the health, safety, or welfare of the people of this State that these proposed regulations, which relate to a required report, apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulation may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulation will have an impact on any of the above, but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The proposed regulation will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation. The Commissioner has considered various alternatives to the proposed regulation and is not aware of a reasonable alternative to the proposed regulation. However, the Commissioner invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendment will affect small businesses to the extent that it affects insurance agents. However, insurance companies, which will also be affected, are by definition not small businesses, pursuant to Paragraph (b)(2) of Government Code section 11342.610.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

TECHNICAL STUDIES OR REPORTS RELIED UPON

The Commissioner hereby provides notice that he intends to rely upon the following documents in proposing this rulemaking action:

- California Private Passenger Automobile Frequency and Severity Bands Manual (Amended May 15, 2008).

The Manual listed above, which is hereby incorporated by reference within this regulation, is part of the file for this rulemaking action. Any member of the public may view this document either on the Department's website at www.insurance.ca.gov, or by contacting the contact person listed above and arranging for an appointment to view the rulemaking file.

OTHER STATUTORY REQUIREMENTS

There are no other specific statutory requirements applicable to the proposed regulation.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 300 Capitol Mall, 16th Floor, Sacramento, CA 95814, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the righthand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2008-00028" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for

instance, "1861.02"), or search by keyword ("bands manual," for example). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Frequency and Severity Bands Manual' link, and click it. Links to the documents associated with these regulations will then be displayed.

**AVAILABILITY OF MODIFIED TEXT
OF REGULATION**

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

**TITLE 15. DEPARTMENT OF
CORRECTIONS AND REHABILITATION**

NOTICE OF PROPOSED REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation**

NOTICE IS HEREBY GIVEN that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and the rulemaking authority granted by Penal Code (PC) Section 5058 in order to implement, interpret, and make specific PC Section 5054, proposes to adopt Section 3099 in the California Code of Regulations (CCR), Title 15 concerning Inmate Trust Account Interest.

PUBLIC HEARING

Date and Time: February 24, 2009 — 9:00 a.m. to 12:00 p.m.
Place: Department of Corrections and Rehabilitation
 Office of Training & Professional Development
 10000 Goethe Road, Mt. Lassen Room, Suite 17
 Sacramento, CA 95827
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close February 24, 2009, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
 Regulation and Policy Management Branch
 Department of Corrections and Rehabilitation
 P.O. Box 942883, Sacramento, CA 94283-0001
 Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**G. Long
 Regulation and Policy Management Branch
 Telephone (916) 341-7329**

Questions regarding the substance of the proposed regulatory action should be directed to:

**J. Parker
 Office of Fiscal Services
 Telephone (916) 255-1064**

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has

otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management and control of the

state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

- This action adopts provisions governing Inmate Trust Account Interest that previously required the Secretary of the Department of Corrections and Rehabilitation (CDCR) to deposit any inmate funds in trust with the Treasurer and earned interest was to be deposited into the Inmate Welfare Fund for the benefit of all inmates. In 1996, several inmates filed suit against the CDCR (formerly the California Department of Corrections) alleging that the CDCR committed an unconstitutional taking and violated their equal protections rights by failing to pay interest on funds deposited in their Inmate Trust Accounts. In 2005 the CDCR agreed to provide interest under a new inmate trust system called the Inmate Restitution Banking and Canteen System. In early 2007, Assembly Bill Number 439 amended Section 5008 of the Penal Code, relating to prisoners, which requires the Secretary of the CDCR to deposit inmate trust account funds into interest bearing accounts and any interest accruing on these funds, less expenses incurred in the investment, would be deposited into qualifying individual inmate and parolee trust accounts. Beginning January 1, 2009, interest earned on Inmate Trust Account deposits will be deposited into qualifying inmates' trust account.
- This action will ensure these provisions provide the Department with the authority and direction for handling the interest earned and requirements to distribute these funds on the established effective date.

TITLE 16. BOARD OF BEHAVIORAL SCIENCES

**TITLE 16 DEPARTMENT OF
CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES
IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-

mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on February 16, 2009 or must be received by the Board of Behavioral Sciences at the hearing.

The Board will hold a public hearing starting at 9:00 a.m. on February 18, 2009, at the Spyglass Inn located at 2705 Spyglass Drive, Pismo Beach, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Information Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4990.20 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4982, 4989.54, and 4992.3 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The Board proposes to amend Section 1888 of Title 16 of the CCR. This section pertains to the Board's disciplinary guidelines for disciplinary action against a licensee under the Administrative Procedure Act (APA) which are incorporated by reference in this Section.

Specifically, the regulation would incorporate amendments to the Guidelines, as revised November 2008, which are as follows:

Penalty Guidelines

- Replace errant references to BPC sections 4986.10, 4986.20, 4986.50, 4986.70, 4986.71 and 4986.75. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections to BPC Sections 4989.14, 4989.20, 4989.26, 4989.54, 4989.56, and 4989.58. The purpose of this proposed change is to make the Guidelines, which

are incorporated at 16 CCR Section 1888, consistent with these current statutes.

- Add a reference to BPC section 4992.3(r) in addition to 4989.54(f) to include the violation of unprofessional conduct statutes by a registrant related to the acquisition of experience hours. The purpose of the proposed change is to make the Guidelines consistent with the newly re-numbered Licensed Educational Psychologist and current Licensed Clinical Social Worker unprofessional conduct statutes.
- Delete references to subsections (a)–(e), (g)–(k) and (n) of Section 1858 of Title 16, CCR. An approved regulatory change operative December 30, 2007, repealed these subsections in accordance with changes implemented by SB 1475, Chapter 659, Statutes of 2006. The purpose of this proposed change is to delete these obsolete references and update the Guidelines.
- Add reference to 16 CCR section 1845(b) related to unprofessional conduct. This reference was inadvertently omitted in the current version of the Guidelines. The purpose of this change is to add clarity and consistency by referencing all relevant code sections related to the violation.
- Add reference to BPC sections 4982(aa)(1), 4992.3(x)(1) and 4989.54(y)(1) that were created by SB 797, Chapter 33, Statutes of 2008. The purpose of this change is to make Section 1888 consistent with current statute. These code sections now specify that it is unprofessional conduct for a licensee or registrant to do any of the following:
 - engaging in an act with a minor punishable as a sexually related crime regardless of whether the act occurred prior to or after registration or licensure; and,
 - engaging in an act described in section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in sections 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time registration or license was issued by the board.
- Add references to BPC sections 4982(y), 4992.3(v) and 4989.54(x). SB 1048, Chapter 588, Statutes of 2007 added willful violation of Chapter 1 of part 1 of division 106 of the Health and Safety Code to the unprofessional conduct statutes of Board licensing law. The purpose of this change is

to make the Guidelines consistent with current statute.

- Add reference to BPC sections 4982(z) and 4992.3(w). SB 1048, Chapter 588, Statutes of 2007 added failure to comply with telemedicine law (BPC section 2290.5) to the unprofessional conduct statutes for board licensees. The purpose of this change is to make the Guidelines consistent with current statute.
- Makes a conforming change to provide consistency for penalties within the same violation category on page 9 of the guidelines related to fiscal and property crimes.
- Make several non-substantive changes to provide clarity and order to page five of the Guidelines.

Optional Terms and Conditions of Probation

- *(Psychotherapy Terms)* Allow a respondent, with the permission of the Board, to secure mandated personal psychotherapy services via videoconferencing. Currently this section is silent on the method by which services may be received. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult, this regulatory change will allow compliance with a personal psychotherapy order in those rural areas where the respondent may be the only licensed mental health professional.
- *(Psychotherapy Terms)* Allow a respondent, with permission of the Board, to receive mandated supervised practice via videoconferencing or with a supervisor not in the respondent’s field of practice. Currently a supervisor providing services pursuant to this section of the Guidelines must be licensed in the same field of practice as the respondent. This section does not currently allow supervision via video conferencing. For the purpose of addressing areas of the state in which access to qualified mental health providers may be difficult or impossible, this regulatory change will allow a respondent alternatives to meeting the conditions of the order, if approved by the board. This change is necessary to increase compliance in areas where a qualified mental health professional may not be available.
- *(Psychotherapy Terms)* Clarify that supervision obtained from a probation supervisor may not be used as experience gained toward licensure. The purpose of this change is to clarify that supervision gained as a condition of probation may only count towards one supervision requirement, meeting the

conditions of the disciplinary order, and may not be counted towards the licensure requirements.

- *(Law and Ethics/Education Terms)* Allow a respondent to take mandated educational courses from an approved educational institution, in addition to accredited institutions or through a course approved by the Board. This is consistent with required coursework for licensure eligibility which allows that education to be gained at a Bureau for Private and Postsecondary Vocational Education approved institution that offers qualifying degrees for Board licensees (BPC 4980.40(a)).
- *(Law and Ethics/Education Terms)* Delete the prohibition against attending workshops to meet educational requirements and allow a respondent to receive mandated educational courses through a workshop. The purpose of this change is to allow greater flexibility for respondents that may have difficulty finding access to these types of courses.
- *(Law and Ethics/Education Terms)* Require that mandated coursework must be completed one year from the effective date of the decision. Currently the guidelines allow a date to be determined by the entity making the order. The purpose of this change is to establish a standard timeframe that will enable the Board to more easily enforce the order and thereby ensure better compliance from respondents.
- *(Reimbursement of Probation Program Terms)* Clarify the reimbursement costs to be paid by respondents by adding a reference line to allow the amount to be paid per month to be entered in the order. The purpose of this change is to add clarity for the respondent about the timeframes for compliance with the order and determination by the Board of the reimbursement costs due.

Standard Terms and Conditions of Probation

- Delete obsolete references to BPC 4986.10 and 4986.70 and replace with correct references to 4989.14, 4989.54(h) and 4989.54(i). SB 1475, Chapter 659, Statutes of 2006 repealed and recast the law relating to the regulation of Licensed Educational Psychologists and moved the content in the above code sections. The purpose of this change is to make this section of the Guidelines consistent with those current statutes.
- *(Cost Recovery Terms)* Specify that a respondent must complete cost recovery payments six months prior to the termination of probation. The purpose of the change is to increase enforceability of cost recovery. Currently the respondent could be

released from probation before the Board becomes aware that the financial requirements of the disciplinary order have not been met. This proposed change is necessary to allow the Board to enforce this provision of a disciplinary order and grant flexibility when necessary to enable the respondent to meet the mandated requirements.

Board Policies and Guidelines

- *(Language for License Surrenders)* The addition of this proposed language would permit the Board to directly discuss a pending stipulation with the staff or advisors to the Board to determine whether to adopt a stipulation proffered by the respondent and the Board’s Executive Officer. This language is necessary for the Board to effectively consider a proposed settlement, to permit communications between Board staff and the Board regarding the pending stipulation, and to comply with the requirements of the Administrative Procedure Act governing settlements and permissible communications with the Board (Government Code sections 11415.60 and 11430.30(b)).
- Allow a respondent to reapply to the Board for licensure three years from the date of surrender. Currently the disciplinary guidelines do not specify a waiting period for reapplication, allowing a respondent to reapply immediately. However, current law (BPC 4990.30) specifies that a petition for reinstatement of a license or registration that has been revoked for unprofessional conduct may be filed only after three years. Both revocation and license surrender occur as a result of unprofessional conduct and therefore should have consistent timeframes for subsequent licensure. The purpose of this change is to create a standardized timeframe for reapplication of a surrendered license consistent with reinstatement of a revoked license.
- Add recommended language for registration applicants and registrants that describes the conditions of revocation of registration and subsequent registrations with the Board. This language is necessary to standardize the orders for registrants as no language currently exists in the disciplinary guidelines; without this standardized language, the Board will continue to observe inconsistencies in the form of the orders given to registrants related to revocation and probation.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the board's laws or regulations and would only affect individuals who are disciplined by the board. Any potential "adverse economic impact" may be avoided simply by complying with the law.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposed action does not increase or decrease the penalties that may be imposed in an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the board's laws or regulations and would only affect individuals who are disciplined by the board. Any potential "adverse economic impact" may be avoided simply by complying with the law.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice. Any interested person may present statements or arguments in writing relevant to the above determinations at the above mentioned hearing.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Tracy Rhine
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7847
Fax: 916-574-8625
Email: tracy_rhine@dca.ca.gov

OR

Name: Christy Berger
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7834
Fax: 916-574-8625
Email: christy_berger@dca.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named above.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named above (or by accessing the Web site listed below).

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

**TITLE 16. BOARD OF BEHAVIORAL
SCIENCES**

**TITLE 16 DEPARTMENT OF
CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on February 16, 2009 or must be received by the Board of Behavioral Sciences at the hearing.

The Board will hold a public hearing starting at 9:00 a.m. on February 18, 2009, at the Spyglass Inn located at 2705 Spyglass Drive, Pismo Beach, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified pro-

posal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4990.16, 4990.18, 4990.20 and 4996.6 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4982(a), 4989.54(a), 4992.3(a) and 4996.6 of the Business and Professions Code and Sections 11105(b)(10) and 11105(e) of the Penal Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The Board proposes to add Section 1815 and amend Section 1886.40 of Title 16 of the CCR. This proposed rulemaking pertains to the mandatory submission of fingerprints to the Department of Justice (DOJ) for a state and federal level criminal offender record information search and the ability of the Board to bring disciplinary action against a licensee or registrant that fails to comply with the fingerprinting requirements therein.

Business and Professions Code (BPC) Section 144 requires an applicant to furnish to specified agencies, including the Board of Behavioral Sciences (Board), a full set of fingerprints for the purpose of conducting criminal history record checks. Additionally, this section allows the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI).

On April 1, 1992, the Board began requiring Marriage and Family Therapist, Marriage and Family Therapist Intern, Clinical Social Worker, Associate Clinical Social Worker and Educational Psychologist applicants to submit fingerprint cards for the purpose of conducting criminal history background investigations through DOJ and the FBI. The fingerprinting of applicants allows the Board a mechanism to enhance public protection by conducting a more thorough screening of applicants for possible registration or licensure. All trainees, interns, and registrants were required to submit a fingerprint card and processing fee with their applications. Candidates already in the examination cycle were required to submit fingerprints by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board.

This proposed regulation will require all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the DOJ's criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ.

Specifically this regulation would:

- Require all licensees on or after October 31, 2009 who have not previously submitted fingerprints to the DOJ or for whom an electronic record of the submission of the fingerprints does not exist with DOJ, to complete a state and federal level criminal offender record information search conducted through the DOJ before his or her license renewal date. The purpose of this provision is to ensure the board receives criminal background and subsequent conviction information on Board registrants and licensees in order to protect the public from unprofessional practitioners and fully implement the Board's mandate to enforce the unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)).
- Requires a license or registration that has been revoked to not be reinstated until the licensee or registrant has submitted fingerprints for a criminal records search conducted through DOJ. The purpose of this provision is to make certain that all licensees, irrespective of licensure status, meet the fingerprinting requirements set forth in this regulation before resuming practice with the public.
- Exempts from the requirements of this proposed regulation licensees or registrants actively serving in the United States military. The purpose of this provision is to allow those licensees or registrants not in active practice to only meet the requirement before returning to active practice with the public.
- Requires licensees and registrants to retain for at least three years either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ, or for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensees' or registrants' fingerprints were taken. The purpose of this provision is to permit the licensee or registrant to demonstrate compliance with the fingerprinting requirement in the event that fingerprint reports are not processed correctly by DOJ.
- Requires licensees and registrants to pay, as directed by the board, the actual cost of compliance with the fingerprinting requirements of this regulation. The purpose of this provision is

to make certain that the licensee or registrant pays the full cost of the service provided.

- Allows the Board to take disciplinary action against a licensee or registrant if he or she fails to comply with the fingerprinting requirements set forth in this regulation. The purpose of this provision is to ensure compliance with this new regulation.
- Makes failure to submit fingerprints to DOJ a citable fine and allows the executive officer of the board to assess fines not to exceed five thousand (\$5,000) for each investigation for the violation. The purpose of this provision is to better ensure compliance and enforceability of this regulation and to further implement the Board's authority under BPC 125.9.
- Deletes obsolete and errant citations in the authority and reference note section following 16 CCR Section 1886.40. The purpose of this change is to update these provisions, which have been re-numbered.

Business and Professions Code section 4990.16 states that the "protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The purpose of the proposed regulatory changes is to ensure that the Board holds up its mandate to protect the public in accordance with section 4990.16. In order to protect the public from incompetent, unethical and unprofessional practitioners, it is necessary for the Board to be informed of past and current criminal convictions that are substantially related to the qualifications, functions, or duties of their professional service for which they are licensed. The unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)) allow the board to deny a license or a registration, or suspend or revoke a license of registration for unprofessional conduct, including the conviction of a crime substantially related to the qualifications, functions or duties of a licensee or registrant. Further, under BPC Section 4996.6, upon renewal, a licensee is required to notify the Board whether he or she has been convicted, as defined in BPC Section 490, of a misdemeanor or a felony. However, for those licensed before the implementation of the Board's fingerprint submission requirement in April 1992, the notification of a criminal conviction relies upon the licensee or registrants self disclosure upon renewal. In order to fully implement the unprofessional conduct statutes that require the Board to discipline a licensee or registrant that has been convicted of a crime substantially related to the qualifications, functions, or duties of their

professional service, the Board must receive all information related to those criminal convictions.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Costs to the Board associated with this proposed regulation for the fiscal year 2009–10 to total \$658,628. Board costs associated with this regulation for fiscal year 2010–11 would total \$633,831 and for fiscal year 2011–12 costs would total \$294,275.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

There would be no costs to businesses to comply with this regulation. This proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees and registrants that do not comply with the proposed regulation.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses: The current processing fees associated with LiveScan fingerprinting are \$32.00 for DOJ and \$24.00 for FBI, with some Live Scan agencies charging additional fees for “rolling” fingerprints and/or administrative processing. Applicants are responsible to pay all fees associated with the fingerprint process. The board estimates that there are approximately 29,578 licensees that have not been fingerprinted through the DOJ. Additionally, the Board estimates that there are a

further 5,000 licensees that have submitted fingerprints with DOJ using rolling fingerprints (Hard cards) before the use of the LiveScan process was widely used. These licensees and registrants would also have to complete a state and federal level criminal offender record information search through DOJ in order to have an electronic record in the DOJ database.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees and registrants that do not comply with the proposed regulation.

There are approximately 750 vendors statewide who provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they are already equipped to provide the service and the fingerprinting requirement will be staggered and extended over the licensees’ renewal periods (biennial cycle).

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing provided for in this Notice.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Tracy Rhine
 Address: 1625 North Market Blvd., Suite S200
 Sacramento, CA 95834
 Telephone: 916–574–7847
 Fax: 916–574–8625
 Email: tracy_rhine@dca.ca.gov

OR

Name: Christy Berger
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7834
Fax: 916-574-8625
Email: christy_berger@dca.ca.gov

writing relevant to the action proposed at a hearing to be held:

Date: February 17, 2009
Time: 10:00 a.m.
Board of Registered Nursing
1625 N. Market Blvd., Suite N-220
(El Dorado Room)
Sacramento, California

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed above.

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named above.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named above (or by accessing the Web site listed below).

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

TITLE 16. BOARD OF REGISTERED NURSING

NOTICE IS HEREBY GIVEN that the Board of Registered Nursing is proposing to take the action described in the Informative Digest. Any interested person may present statements or arguments orally or in

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Registered Nursing (Board) at its office not later than 5:00 p.m. on February 17, 2009, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 2708.1, 2715, 2761(a)(4), 2761(f), and 2811.5 of the Business and Professions Code, and to implement, interpret or make specific Sections 2734, 2761(a)(4), 2761(f), 2811, and 2811.5 of said Code, and Penal Code Section 11105(b)(10) the Board is considering changes to Division 14 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST

Business and Professions Code Section 2715 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Nursing Practice Act. The Board is proposing the following changes:

Amend Section 1419.

Existing regulations provide that a renewal application shall be on the form provided by the Board, accompanied by the fee and required information, and filed with the Board. This proposal would require that: (1) as a condition of renewal for a license that expires on or after March 1, 2009, a licensee, who was never fingerprinted by the Board or for whom a fingerprint record no longer exists, furnish to the Department of Justice (DOJ) a full set of fingerprints for the purpose of conducting a criminal history record check, and a state and federal criminal offender record information search. The requirement is waived under specified conditions.

The renewal applicant will be required to certify whether he or she has complied with the fingerprint requirement. Failure to comply with the requirement would constitute grounds for disciplinary action by the Board; (2) all renewal applicants disclose on the renewal form, whether since his or her last license renewal, he or she has been convicted of any violation of the law, with specified exceptions, in this state or any other state, or if he or she has had a license disciplined by a governmental agency or other disciplinary body. The proposal also specifies that failure to provide all information required in the Section may render the renewal application incomplete and therefore not eligible for renewal.

The existing Section has been reformatted to accommodate the additional renewal requirements and action that may be taken for failure to comply with the requirements.

Amend Section 1419.1.

Existing regulations specify that if a licensee wants to activate an inactive license, the licensee must submit a written request and evidence of 30 hours of approved continuing education taken during the two-year period immediately preceding the request for activation. This proposal would require that a licensee, who was never fingerprinted by the Board or for whom a fingerprint record no longer exists, must also furnish a full set of fingerprints as a condition of activating an inactive license.

Amend Section 1419.3.

Existing regulations provide, in relevant part, for the reinstatement of an expired license if the licensee pays the renewal and penalty fees and submits evidence of 30 hours of continuing education taken within the prior two-year period. This proposal would require that a licensee, who was never fingerprinted by the Board or for whom a fingerprint record no longer exists, must also furnish a full set of fingerprints as a condition of reinstating the expired license.

The majority of the proposed regulatory language was approved by the Office of Administrative Law as an emergency regulatory action based on Sections 11346.1 and 11349.6 of the Government Code on 11/24/2008 and will expire on 5/27/2009.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funds to the State: The processing of records and other reports generated from (1) fingerprinting of the approximate 147,000 registered nurses, who have never been fingerprinted or for whom a record no longer exists, and (2) the self-reporting of license discipline and convictions by license renewal applicants will necessitate addition of 6.5 permanent and 4.5 limited term two-

year Board positions, and related costs for the Office of the Attorney General, Office of Administrative Hearings, and Division of Investigation. There are no costs/savings in federal funds to the state. The estimated cost per fiscal year is:

- 2008-09 = \$491,000
- 2009-10 = \$1,678,000
- 2010-11 = \$1,672,000
- 2011-12 and ongoing = \$1,235,000

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses, or the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Persons or Businesses: Registered nurses, who have not previously been fingerprinted for the Board or for whom a fingerprint record no longer exists, will be required to be fingerprinted at the time of license renewal, reactivation, or reinstatement. The cost for a person to get fingerprinted is approximately \$65.00. Of this fee, \$51.00 goes to the DOJ for conducting the background check and providing criminal record reports to the Board; \$14.00 goes to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

This regulatory proposal will not have a significant economic impact on small businesses. There are approximately 750 vendors statewide, including small businesses, which provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they are already equipped to provide the service, and the fingerprinting of the approximate 147,000 registered nurses will be extended over a two (2) year period.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no alternative it considered or that has otherwise been identified and

brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board considered requiring all registered nurses not previously fingerprinted or for whom no fingerprint record existed to be fingerprinted upon approval of the new regulation; however, it was determined that this alternative was not feasible for the Board and DOJ due to staffing, workload and resources being limited.

Any interested person may present statements or arguments orally or in writing relevant to alternatives to the proposed regulations during the written comment period or at the public hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Registered Nursing at 1625 N. Market Blvd., Suite N-217, Sacramento, California.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed amendments is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to Alcidia Valim at (916) 574-7684; fax to (916) 574-8637; or e-mail to alcidia_valim@dca.ca.gov.

For questions relating to the substance of the regulatory proposal, contact Geri Nibbs at (916) 574-7682, or

fax to (916) 574-8637; or email to geri_nibbs@dca.ca.gov.

Website Access: Materials regarding this proposal can be found at the Board's website: www.rn.ca.gov.

TITLE 18. STATE BOARD OF EQUALIZATION

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the requirement of Section 87306 of the Government Code, proposes to amend Regulation 6001, State Board of Equalization Conflict of Interest Code, in Title 18, Division 2.1 of the California Code of Regulations. A public hearing relevant to this action will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 16, 2009. At the hearing, any person interested may present statements or arguments orally at that time and place. The State Board of Equalization will consider written statements or arguments if received before March 16, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Regulation 6001, with Appendices A and B, is required by the Political Reform Act, which is found in Government Code sections 81000-91015. Regulation 6001 incorporates by reference the standard Conflict of Interest Code adopted by the Fair Political Practices Commission in Title 2 California Code of Regulations, section 18730. Appendix A lists all designated positions and the applicable designated disclosure categories. Appendix B describes the reporting requirements of each disclosure category.

The proposed changes to Appendix A reflect the classification and organizational changes that have taken place at the Board since the Conflict of Interest Code was last amended.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendment to the regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed amendment to the regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local

agencies, or cost or savings on Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the amendment to Regulation 6001 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with other states.

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The proposed regulations may affect small business.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Regulation 6001 has no comparable federal regulation.

AUTHORITY

Section 87306, Government Code.

REFERENCE

Sections 87300–87302 and 87306, Government Code.

CONTACT

Questions regarding the content of the proposed regulation should be directed to Ms. Blanca Breeze, Tax Counsel IV, telephone (916) 457–7220, fax (916) 323–3387, email BlancaBreeze@boe.ca.gov or by mail at State Board of Equalization, Attn: Blanca Breeze, MIC:82, P.O. Box 942879, Sacramento, CA 94279–0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Richard Bennion, Regulations Coordinator, telephone (916) 445–2130, fax (916) 324–3984, email RichardBennion@boe.ca.gov or by mail at State Board of Equalization, Attn: Richard Bennion, MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279–0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed amendment to the regulation. It will also be available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed amendment to the regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified

regulation will be mailed to those interested parties who commented orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The Board will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

TITLE 20. ENERGY COMMISSION

NOTICE OF PROPOSED ACTION

**Adoption of Regulations
to
Define the Administration of the
Alternative and Renewable Fuel and Vehicle
Technology Program**

Docket No.: 08-OIR-1

The California Energy Commission (Energy Commission) proposes to adopt new regulations to define the administration of the Alternative and Renewable Fuel and Vehicle Technology Program in accordance with the Energy Commission's authority under Health and Safety Code section 44270 et seq. The regulations would implement, interpret, and make specific Health and Safety Code sections 44270-44274, which were added in 2007 (Assembly Bill 118, Núñez, Chapter 750, Statutes of 2007). The proposed action is authorized under Public Resources Code sections 25213 and 25218(e) and Health and Safety Code sections 44271 and 44271.5.

NOTICE THAT PUBLIC HEARING IS SCHEDULED

The date set for the adoption of regulations at a public hearing is:

Commission Business Meeting
WEDNESDAY, February 25, 2009
Beginning 10 a.m.
California Energy Commission
First Floor, Hearing Room A
1516 Ninth Street
Sacramento, California
(Wheelchair Accessible)

Note: Audio from this meeting will be broadcast over the Internet.

Please see information at:
[www.energy.ca.gov/webcast/]

ORAL AND WRITTEN STATEMENTS

Interested persons wishing to comment on the proposed regulations must submit their comments in writing to the Energy Commission by February 16, 2009. All comments must be identified with "**Docket No. 08-OIR-1**" and may be submitted in one of three ways:

1) Mailing them to:

California Energy Commission
Dockets Unit
Docket No. 08-OIR-1
1516^{9th} Street, MS-4
Sacramento, CA 95814-5512

2) E-mailing them to: [DOCKET@energy.state.ca.us], or

3) Faxing them to Dockets at (916) 654-4365

COPIES OF THE INITIAL STATEMENT OF REASONS AND THE TEXT

The Energy Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms of the proposed regulations, please visit the Energy Commission's website at [www.energy.ca.gov/ab118/index.html] or contact Aleecia Macias at (916) 654-4526 or by e-mail at [amacias@energy.state.ca.us]. The Energy Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address.

INTERNET ACCESS

The Energy Commission maintains a website to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Energy Commission for this rulemaking, including this notice of proposed action, the text of the proposed regulations, the initial statement of reasons, and the economic and fiscal impact statement, as well as any other document in the rulemaking file, have been posted at [www.energy.ca.gov/ab118/index.html].

COPY OF THE FINAL STATEMENT
OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons once it has been prepared by visiting the Energy Commission's website at [www.energy.ca.gov/ab118/index.html] or contacting Aleecia Macias at (916) 654-4526 or by e-mail at [amacias@energy.state.ca.us].

POSSIBLE CHANGES

Changes to the proposed regulations may result from public comments, staff recommendations, or recommendations from Commissioners. Changes may also result if they improve the clarity or effectiveness of the regulations. If the Energy Commission considers changes, they will be nonsubstantial or grammatical in nature or sufficiently related to the original text as allowed by Government Code Section 11346.8. In addition a full copy of the text with all proposed changes will be available for review at least 15 days prior to the date on which the Energy Commission adopts the proposed regulations.

PUBLIC ADVISER

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission activities. If you want information on how to participate in this forum, please contact the Public Adviser's Office at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at [PublicAdviser@energy.state.ca.us]. If you have a disability and require assistance to participate, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

CONTACT PERSON

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations, should be directed to Aleecia Macias at (916) 654-4526 or by e-mail at [amacias@energy.state.ca.us]. The alternate contact person is Tobias Muench who can be reached at (916) 654-4831 or by e-mail at [tmuench@energy.state.ca.us].

INFORMATIVE DIGEST

The proposed regulations would make specific the process for implementing the California Energy Commission's new authority to administer the *California Alternative and Renewable Fuel, Vehicle Technology,*

Clean Air, and Carbon Reduction Act of 2007 (Act). The Energy Commission's authority stems from AB 118, which was enacted in October 2007. AB 118 added sections 44270 to 44274, to the Health and Safety Code. The objective of the Act is to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change goals. In addition the Act establishes the goal of diversifying California's transportation fuels while benefiting the state's economy. The proposed regulations provide the guidance and rules for which funding, established by the Act, can be distributed for appropriate projects to best meet the Act's objectives.

The Act requires the Energy Commission to perform a number of tasks including defining terms, establishing sustainability goals based on full fuel-cycle assessments, ensuring funds are not provided for projects required by law, creating an advisory body, drafting an investment plan, and screening and selecting projects.

The regulations provide clarification and details regarding the following areas: Advanced Vehicle Technology, Sustainability Goals, Funding Restrictions, Advisory Body, and the Investment Plan. The regulations are necessary to provide potential applicants with guidance on the types of projects that will be eligible for funding and to provide staff with a clear means to evaluate applications and fund those projects consistent with the goals and objectives of the Act.

INCORPORATION BY REFERENCE

The proposed regulations would not incorporate any documents by reference.

SMALL BUSINESS IMPACTS

The proposed regulations would not directly affect small businesses. No small business would be legally required to comply with the regulations nor would any small business necessarily derive a benefit or incur a detriment as a result of these regulations being adopted. The statute, coupled with the proposed regulations, creates a funding program which is voluntary. Under the proposed regulations no entity is required to apply for funding. For those businesses that do apply, there will potentially be costs associated with the application process and any reporting requirements during the life of the project.

BUSINESS AND REPRESENTATIVE PRIVATE
PERSON COST IMPACTS

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

LOCAL MANDATE DETERMINATION

If adopted, the proposed regulations would not impose a mandate on local agencies or school districts.

COST/SAVINGS ESTIMATE

There would be no cost or savings to any state agency as a result of the regulations being adopted. Nor would there be any cost to local agencies or school districts as a result of the regulations being adopted and, thus, no cost that is required to be reimbursed under Government Code section 17500 et seq. There would be no cost or savings in federal funding to the state if the regulations are adopted and implemented. Further, there would be no nondiscretionary costs or savings imposed upon local agencies. Under the proposed regulations no entity is required to apply for funding.

INITIAL DETERMINATION — STATEWIDE ECONOMIC IMPACT ON BUSINESSES

Adoption of the proposed regulations would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts: (1) the proposed regulations are part of a funding program that would apply only if an entity voluntarily chooses to submit a project proposal to participate in the program; (2) the proposed regulations have no provisions that would require, mandate, or impose anything directly affecting business in the state; and (3) the potential administrative costs incurred for voluntarily applying for funding are minimal compared to the amount of funding that could be received and would only impact entities applying for funding.

Although the specific costs to a small business applicant for funding is unknown at this time, it is assumed that successful applicants will incur costs of preparing an application, monitoring, and reporting as required by a funding agreement, complying with sustainability requirements, and, where applicable, obtaining a permit for a project subject to the California Environmental Quality Act.

ASSESSMENT REGARDING JOBS AND BUSINESSES

The proposed regulations would specify rules for a funding program which can award funds to applicants who voluntarily apply for funding. If selected, the applicant would receive funds for a specific transportation based project, which could have a positive effect on

maintaining or creating California jobs or maintaining, expanding, or creating a business within the state. Funded projects may also produce significant indirect or long term benefits including: (1) fuel cost savings; (2) reduction in the state's cost of petroleum dependence; (3) greenhouse gas emissions reduction; and (4) development of new industries with associated job creation.

IMPACT ON HOUSING COSTS

The regulations proposed for adoption will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVE PROPOSALS

Before adopting the proposed amendments, the Energy Commission must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to the Energy Commission's attention would be more effective in carrying out the purpose for which the adoption is proposed or would be as effective as and less burdensome to affected private persons than the proposed adoption. To date, the Energy Commission is not aware of any alternative that would be more effective or less burdensome than the proposed regulations, given the statutory requirements and objectives of the funding program. In addition, the regulations are narrowly tailored to provide clarification and details in a limited fashion to implement the program fairly and in accordance with the statute.

TITLE 20. PUBLIC UTILITIES COMMISSION

DIVISION 1 PUBLIC UTILITIES COMMISSION

NOTICE OF PROPOSED REGULATORY ACTION

The California Public Utilities Commission (Commission) proposes to amend regulations described below after considering all comments, objections, or recommendations regarding the proposal.

At a duly noticed regularly scheduled meeting not earlier than March 12, 2009, at 10:00 a.m., in the Commission Auditorium, 505 Van Ness Avenue, San Francisco, the Commission will consider a proposal to amend the Rules of Practice and Procedure, contained in Article 19 of the Commission's Rules of Practice and Procedure, and set forth in Division 1, Chapter 1 of Title 20 of the California Code of Regulations. The proposed

amended regulations will reflect changes in the Commission’s administration, provide consistency between the rules, and provide greater clarity.

AUTHORITY TO ADOPT RULES

Article XII, Section 2 of the California Constitution and Section 1701 of the Public Utilities Code authorize the Commission to adopt Rules of Practice and Procedure.

INFORMATIVE DIGEST

The California Public Utilities Commission proposes amendments to its Rules of Practice and Procedure to reflect changes in the Commission’s administration, provide consistency between the rules, and provide greater clarity. These amendments include:

- Clarify how persons may seek party status at a hearing
- Require service of documents on the Chief Administrative Law Judge if an Administrative Law Judge is not yet assigned to the proceeding.
- Codify the categories of service and the process for requesting addition to the official service list, consistent with current Commission practice.
- Require amendments to an application, protest, complaint or answer to be filed in advance of the issuance of the scoping memo.
- Delete references to the Commission’s San Diego office, which is now closed.
- Incorporate the procedures for the electronic tendering and filing of documents, and require utilities whose gross intrastate revenues exceed \$10 million to use the electronic filing system to file documents.
- Clarify the interaction between Rules 8.2(d) and 8.4 regarding the applicability of the ex parte requirements.
- Delete redundant provisions regarding filing, service and posting of notices of ex parte communication.
- Require motions to seal the evidentiary record with respect to prepared testimony to be made 10 days in advance of hearing.
- Require pleadings that are filed, with the permission of the Administrative Law Judge, beyond the established time limit to so indicate in their opening paragraphs.
- Clarify that proposed decisions and presiding officers’ decisions are served on the entire official service list, not just on parties.

- Clarify that, in identifying legal errors in proposed and alternate decisions, comments must make specific reference to the law.
- Clarify that weight will not be given to comments on proposed and alternate decisions which fail to focus on factual, legal or technical errors and, in citing such errors, fail to make specific reference to the record or the law.
- Direct members of the public to submit standing orders for receipt of copies of the agenda to the Commission’s Administrative Law Judge Division, rather than the Management Service Division, consistent with internal administrative changes.
- Clarify the time for filing requests for an award of intervenor compensation in the event of a proceeding in which multiple decisions are issues.
- Add a provision for the filing of responses to requests for an award of intervenor compensation.
- Replace the word “party” with the term “person” or “interested person” as appropriate, where the word is used only in the vernacular sense rather than in the technical sense of the word.

AVAILABILITY OF STATEMENT OF REASONS AND PROPOSED TEXT

The proposed rule amendments are set forth in Draft Resolution ALJ-224 and available on the Commission’s web site, www.cpuc.ca.gov. The draft resolution includes a more detailed initial statement of the reasons for the rule amendments. Appendix A to the draft resolution sets forth the complete text of the proposed rule amendments.

COMMENTS AND INQUIRIES

Any interested person may submit written comments concerning the proposed rule amendments. The written comment period closes at 5:00 p.m. on February 16, 2009. All comments must be served on the following contact person:

Hallie Yacknin
 Administrative Law Judge
 California Public Utilities Commission
 Division of Administrative Law Judges
 505 Van Ness Avenue
 San Francisco, CA 94102
 Telephone: (415) 703-1675
 e-mail: hsy@cpuc.ca.gov

Inquiries concerning the substance of the proposed amendment, requests for copies of the text for the proposed amendment, or other questions should be di-

rected to ALJ Yacknin at the above street or e-mail address or telephone number.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the comment period, the Commission may adopt the proposed rule amendments substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the modified text, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Commission adopts the rule amendments. Requests for copies of any modified rule amendments should be sent to the attention of ALJ Yacknin at either of the addresses indicated above. The Commission will accept written comments on the modified regulations, if any, for 15 days after the date on which the modifications are made.

GENERAL PUBLIC INTEREST

**TITLE 2. DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or CEIR has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

**DEPARTMENT OF HEALTH CARE
SERVICES**

NOTICE OF GENERAL PUBLIC INTEREST

**The California Department of Health Care Services
Skilled Nursing Facility Quality Workgroup
Meeting Information**

Information about the Skilled Nursing Facility (SNF) Quality Workgroup is available at the Department of Health Care Services (DHCS) web site page at www.dhcs.ca.gov/services/medi-cal/Pages/SNFQuality-Workgroup.aspx. Questions can be e-mailed to snfquali@dhcs.ca.gov.

Attached you will find the agendas for the January 12, 2009, and January 22, 2009 Skilled Nursing Facility

Quality Workgroup meetings. Both meetings will be held at:

10:15 a.m. – 3:15 p.m.
 University of Southern California State Capitol Center
 1800 I Street, Sacramento, CA 95814

SKILLED NURSING FACILITY QUALITY WORKGROUP AGENDA

Monday, January 12, 2009
 10:15 a.m. to 3:15 p.m.
 University of Southern California State Capitol Center
 1800 I Street Sacramento, CA 95814

**Call-in information is as follows:
 Dial in Number 1-877-917-7131
 Participant Pass code 1629**

Welcome	Monique Parrish (MP), Facilitator
Review agenda	MP
Review summary of 12/17/08 meeting	MP
Status of outstanding issues/requests	MP
Public comment	MP
Discussion of (1) quality measures, including key indicators and outcomes, and (2) regulatory compliance and consequences for noncompliance.	
Continue discussion and refinement of Objectives 2 & 3:	MP
<ul style="list-style-type: none"> • <u>Objective 2:</u> Define a process for reviewing information and making recommendations. • <u>Objective 3:</u> Establish a process for reviewing the final set of recommendations for the workgroup summary report, with public input. 	
Public comment	MP
Develop AB 1629/ratesetting methodology recommendations	MP
Public comment	MP
Develop meeting agenda for January 22, 2009 meeting	MP

Public comment	MP
Closing remarks and meeting evaluation	MP
Public comment	MP
Adjournment	

**Notes:
 Morning and afternoon breaks will be included as part of this agenda. A working lunch is scheduled — lunch is provided for the Workgroup only.**

SKILLED NURSING FACILITY QUALITY WORKGROUP AGENDA

Thursday, January 22, 2009
 10:15 a.m. to 3:15 p.m.
 University of Southern California State Capitol Center
 1800 I Street Sacramento, CA 95814

**Call-in information is as follows:
 Dial in Number 1-877-917-7131
 Participant Pass code 1629**

Welcome	Monique Parrish (MP), Facilitator
Review agenda	MP
Review summary of 1/12/09 meeting	MP
Status of outstanding issues/requests	MP
Public comment	MP
Continued development of AB 1629 workgroup recommendations	MP
Public comment	MP
Discussion of Workgroup Summary Report	MP
Public comment	MP
Final closing remarks and summary meeting process evaluation	MP
Public comment	MP
Adjournment	MP

**Notes:
 Morning and afternoon breaks will be included as part of this agenda. A working lunch is scheduled — lunch is provided for the Workgroup only.**

Opportunities for public comment will be provided throughout the agenda. If you wish to speak, place your name on the sign-in list. If you participate by phone, the facilitator and/or operator will provide instructions for making your comment. Prior to making your comments, please state your name for the record and identify any group or organization you represent. Depending on the number of individuals wishing to address the workgroup, the facilitator may establish specific time limits on presentations.

For individuals with disabilities, the Department of Health Care Services will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of training or meeting materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write:

Jennifer Lovett
Civil Rights Office
Department of Health Care Services
Phone: (916) 323-2412
California Relay Service for the hearing impaired:
771/1-800-735-2929
Email: Jennifer.Lovett@dhcs.ca.gov

Please make your request for assistive services at least seven days in advance of the meeting.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT

Notice to Interested Parties
January 2, 2009

Announcement of a Public Comment Period on the
Documents

Development of a Reference Dose (RfD)
for Methamphetamine
and

Assessment of Children's Exposure to Surface
Methamphetamine Residues in Former Clandestine
Methamphetamine Labs, and Identification of a
Risk-Based Cleanup Standard for Surface
Methamphetamine Contamination

The Office of Environmental Health Hazard Assessment (OEHHA) has released the final drafts of the two

documents, *Development of a Reference Dose (RfD) for Methamphetamine* and *Assessment of Children's Exposure to Surface Methamphetamine Residues in Former Clandestine Methamphetamine Labs, and Identification of a Risk-Based Cleanup Standard for Surface Methamphetamine Contamination*. These two documents were first released in December of 2007 for public review and comment and for discussion at public workshops in January 2008. The documents also went through a peer review process mandated in Health and Safety Code Section 57004. OEHHA has responded to all comments provided by the public and by the external peer reviewers. The documents have been modified based on the comments received and are now ready for their final review by the public. Each document has a section on responses to comments received that describe any changes made in the revised drafts of the documents.

Under the provision of the Health and Safety Code Section 25400.16(c), the Department of Toxic Substances Control (DTSC), in consultation with OEHHA, is required to develop a health-based target remediation standard for surface methamphetamine contamination in residences that were used to illegally manufacture methamphetamine.

The final draft reports, developed by OEHHA, will form the basis for the standard that is intended to ensure safe human re-occupancy of the residence. Individuals are encouraged to review and comment on the two final draft reports. Please refer to http://www.oehha.ca.gov/public_info.html to access the final draft reports and other specific information regarding OEHHA's reports.

OEHHA will accept all comments from the public provided in writing until 5:00 p.m., February 3, 2009 to the following address:

Mr. Leon Surgeon
Integrated Risk Assessment Branch
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS - 12B
Sacramento, California 95812-4010
Fax: (916) 322-9705
E-mail: irab@oehha.ca.gov

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

**California Environmental Protection Agency
Office of Environmental Health Hazard
Assessment
Notice to Interested Parties**

January 2, 2009

**ANNOUNCEMENT OF PUBLICATION OF THE
FINAL PUBLIC HEALTH GOAL FOR
2,4-DICHLOROPHENOXYACETIC ACID
(2,4-D) IN DRINKING WATER**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the final technical support document and responses to comments for the Public Health Goal (PHG) for the herbicide 2,4-dichlorophenoxyacetic acid (2,4-D) in drinking water. The first draft of this document was posted on the OEHHA Web site (www.oehha.ca.gov) on June 22, 2007 and a public workshop was held on July 16, 2007 to discuss the scientific basis and recommendations in the draft technical support document. OEHHA follows the requirements set forth in Health and Safety Code, Sections 57003(a) and 116365, for conducting the workshop and obtaining public input. Following the workshop, OEHHA revised the document as appropriate, and made it available on July 4, 2008 for a 30-day public review and scientific comment period. OEHHA has considered the comments from all interested parties at the workshop and during the public review and scientific comment periods, and finalized the document. The final document and responses to the major comments received are posted on the OEHHA Web site (www.oehha.ca.gov/water/phg/index.html).

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (Health and Safety Code Section 116365) requires OEHHA to develop PHGs based exclusively on public health considerations. PHGs published by OEHHA will be considered by the California Department of Health Services in setting drinking water standards (Maximum Contaminant Levels, or MCLs).

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622-3200 or the address below.

Michael Baes (mbaes@oehha.ca.gov)
Pesticide and Environmental Toxicology Branch
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay St., 16th floor
Oakland, CA 94612

Attention: PHG Project

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

**NOTICE OF INTENT TO LIST METHANOL
January 2, 2009**

A chemical may be listed under the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as Proposition 65; codified at Health and Safety Code section 25249.5 et seq.) when a body considered to be authoritative by the state's qualified experts has formally identified the chemical as causing cancer or reproductive toxicity. The following entities are identified as authoritative bodies for this purpose: the U.S. Environmental Protection Agency, the International Agency for Research on Cancer, the U.S. Food and Drug Administration, the National Institute for Occupational Safety and Health, and the National Toxicology Program.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency intends to list the chemical, *methanol* (CAS No. 67-56-1) as known to the State to cause reproductive toxicity, pursuant to this administrative mechanism as provided in Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25306 (formally Title 22, Cal. Code of Regs., section 12306).

Relevant information related to the possible listing of *methanol* was requested in a notice published in the *California Regulatory Notice Register* on June 22, 2007 (Register 2007, No. 25-Z). OEHHA received and responded to public comments.

OEHHA has determined that *methanol* meets the criteria for listing under Title 27, Cal. Code of Regs., section 25306, based on the findings of the National Toxicology Program's Center for Evaluation of Risks to Human Reproduction (NTP-CERHR, 2003). OEHHA is therefore issuing this notice of intent to list this chemical under Proposition 65. A document providing more detail on the basis for the listing of *methanol* can be obtained from OEHHA's Proposition

65 Implementation Office at the address and telephone number indicated below, or from the OEHHA Web site at: <http://www.oehha.ca.gov/>.

Comments as to whether *methanol* meets the criteria for listing provided in Title 27, Cal. Code of Regs., section 25306, along with any supporting documentation, should be sent to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900
E-Mail: coshita@oehha.ca.gov

Comments may also be delivered in person or by courier to the above address. In order to be considered, comments must be received at OEHHA by 5:00 p.m. on Monday, February 2, 2009.

REFERENCE

National Toxicology Program — Center for the Evaluation of Risks to Human Reproduction (NTP-CERHR, 2003). *NTP-CERHR Monograph on the Potential Human Reproductive and Developmental Effects of Methanol*. NTH Publication No. 04-4478.

**OAL REGULATORY
DETERMINATIONS**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION**

(Summary Disposition)

**(Pursuant to Government Code
Section 11340.5 and
Title 1, section 270, of the
California Code of Regulations)**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Date: December 18, 2008
To: Donald Young
From: Chapter Two Compliance Unit
Subject: **2008 OAL DETERMINATION NO. 33 (S)
(CTU2008-1121-01)**

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation “Shower Program East Block” memo.

On November 21, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether the “Shower Program East Block” memo constitutes an underground regulation. The challenged memo is on California State Prison—San Quentin letterhead with the subject heading “Shower Program East Block,” dated November 14, 2008. The provisions of this memo describe certain rules related to shower usage on the East Block at San Quentin. According to this memo, if not participating in the work program, inmates are provided the opportunity to shower three times per week. The particular rule that you alleged to be an underground regulation states that participation in the yard program will be considered the opportunity to shower for that day.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058 establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

- (1) Rules issued by the director applying solely to a particular prison or other correctional facility....

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

...

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies solely to the inmates of the California State Prison—San Quentin. It was issued by D. Coleman, Unit Lieutenant, East Block, California State Prison—San Quentin. Inmates housed at other institutions are controlled by those other institution’s rules for shower usage. The rule you challenge was issued by the California State Prison—San Quentin, and applies only to inmates at the California State Prison—San Quentin. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1).³

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

- (A) The challenged rule has been superseded.
- (B) The challenged rule is contained in a California statute.
- (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
- (D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
Susan Lapsley
Director

/s/
George C. Shaw
Staff Counsel

Copy: Matthew Cate

DEPARTMENT OF MENTAL HEALTH

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

**2008 OAL DETERMINATION NO. 32
(OAL FILE # CTU 2008-0606-02)**

REQUESTED BY: Jeff Griffin, Executive Director of Citizens Commission on Human Rights of Los Angeles

CONCERNING: California Department of Mental Health Special Order Number 339, titled Involuntary Administration of Antipsychotic Medication to Mentally Disordered Offender Individuals (Penal Code 2962 and 2972) and Not Guilty by Reason of Insanity Individuals (Penal Code 1026)

Determination Issued Pursuant to Government Code Section 11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a “regulation” as

defined in Government Code section 11342.600¹ and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250.² OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

CHALLENGED RULE

On June 6, 2008, Mr. Griffin, Executive Director of Citizens Commission on Human Rights of Los Angeles (Petitioner) submitted a petition to OAL challenging Special Order Number 339, titled “Involuntary Administration of Antipsychotic Medication to Mentally Disordered Offender Individuals (Penal Code 2962 and 2972) and Not Guilty by Reason of Insanity Individuals (Penal Code 1026)” (Special Order No. 339). Special Order No. 339 was issued by the Department of Mental Health (Department) and was effective on October 22, 2007. The Petitioner alleges that Special Order No. 339 meets the definition of a “regulation” that should have been adopted pursuant to the APA. A copy of Special Order No. 339 is included with this determination as Attachment #1.

Individuals committed to a state hospital as a mentally disordered offender pursuant to Penal Code Sections 2962 and 2972, are referred to as MDOs. Individuals committed to a state hospital as not guilty by reason of insanity pursuant to Penal Code Section 1026 are referred to as NGIs.

DETERMINATION

OAL determines that Special Order No. 339 meets the definition of a “regulation” as defined in Govern-

¹ Government Code section 11342.600 states:

“Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² California Code of Regulations, title 1, section 250, subdivision (a) defines “underground regulation:”

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

ment Code section 11342.600 that should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

On October 22, 2007, the Deputy Director of Long Term Care Services of the Department issued Special Order No. 339. Special Order No. 339 states that the purpose of the special order is:

. . .to provide the State Hospitals with uniform direction in the process of seeking authority for involuntary administration of antipsychotic medication for individuals committed to a State Hospital as MDOs (Penal Code Sections 2962 and 2972), and for individuals committed as NGIs (Penal Code Section 1026), who refuse to give consent to take prescribed antipsychotic medication.

Special Order No. 339 directs state hospitals to establish procedures and policies consistent with the Supreme Court decision in *In re Qawi*³ (*Qawi*). Special Order No. 339 requires:

. . .all treating psychiatrists and physicians to provide individuals with education and information they need as to the overall benefits and risks of taking prescribed antipsychotic medication. This education is focused not only on medication, but to encourage an individual’s participation in all aspects of his/her treatment plan.

If the individual refuses antipsychotic medication, Special Order No. 339 requires that state hospitals are required to adhere to the following procedures:

- In a “psychiatric emergency situation,” the state hospital can legally prescribe antipsychotic medication to individuals. “Emergency” is defined in Welfare and Institutions Code section 5008(m).⁴
- The state hospital’s procedures must be consistent with the following principles:
 - An emergency situation is defined as when an individual is considered or becomes an imminent danger to self and/or others as a result of mental disease, defect, or disorder.

³ *In re Kanuri Surgery Qawi* (2004) 32 Cal.4th 1 [81 P.3d 224]

⁴ Welfare and Institutions Code section 5008(m) defines “emergency” to mean:

. . .a situation in which action to impose treatment over the person’s objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment.

- Emergency medication administration is considered to be an emergency as long as, but only as long as the psychiatric emergency continues to exist. Once the emergency is over medication should cease unless the individual voluntarily consents to treatment.
- It is not necessary for harm to take place or become unavoidable prior to the administration of antipsychotic medication or treatment.
- Antipsychotic medication shall be provided in the manner least restrictive to personal liberty of the individual.
- Individuals who are mentally ill and dangerous to self and/or others may be referred to a medical Antipsychotic Medication Review panel to determine the necessity for antipsychotic medication.
 - The panel must consist of specified persons who are not directly involved with the individual's treatment.
 - A social worker or nurse will act as the individual's advocate.
 - At least two of the three members of the panel must find that the individual meets criteria for involuntary antipsychotic medication.
 - Involuntary antipsychotic medication may be ordered for 14 days.
 - After 14 days, the treatment will be reviewed and may be continued for up to 180 days.
 - After 180 days a new hearing is required to consider the need for continued treatment.
- In non-emergency circumstances, long term authority for involuntary medication must meet the following requirements:
 - If an individual has been referred to the Antipsychotic Medication Review panel for the administration of antipsychotic medication, the state hospital is directed to file a petition with the court requesting an order for involuntary antipsychotic medication.
 - For convenience and efficiency, the need for involuntary antipsychotic medication should be addressed to the court when commitment or recommitment or other court proceedings are already scheduled. However the filing of a petition with the court should not be delayed to wait for the rest of the court proceedings to be held when this would result in risk of harm to the individual and/or others.

On September 29, 2008, OAL received a response from the Department. The response argues that Special Order No. 339 does not meet the definition of a regulation for the following reasons:

1. Special Order No. 339 restates *Qawi* and therefore is exempt from the APA because it falls under the "only legally tenable interpretation" exemption. As part of this argument, the Department states that the Special Order is seeking to protect and enforce the rights of MDOs and NGIs by ensuring that the hospitals' staff is aware of the rights set forth in the Penal Code and *Qawi*.
2. Special Order No. 339 is exempt from the APA because it falls under the "internal management" exception.

OAL received no comments from the public.

OAL received the Petitioner's rebuttal to the Department's response on October 27, 2008. The rebuttal countered the Department's response by arguing that Special Order No. 339 is neither a restatement nor does it fall under the internal management exemption from the APA.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in California Code of Regulations, title 1, section 250.

OAL may issue a determination as to whether or not an agency issued, utilized, enforced, or attempted to enforce a rule that meets the definition of a "regulation" as defined in Government Code section 11342.600 that should have been adopted pursuant to the APA.⁵ An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

⁵ Government Code section 11340.5(b).

To determine if an agency issued, utilized, enforced, or attempted to enforce an underground regulation in violation of Government Code section 11340.5, it must be demonstrated that the agency rule is a “regulation” and not exempt from the APA.

ANALYSIS

A determination of whether the challenged rule is a “regulation” subject to the APA depends on (1) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. The Department is charged with the responsibility of governing all state mental hospitals. Welfare and Institutions Code section 4101 provides that:

. . . all of the institutions under the jurisdiction of the State Department of Mental Health shall be governed by uniform rule and regulation of the State Department of Mental Health. . . .

There are five state hospitals under the jurisdiction of the Department: Atascadero, Metropolitan, Napa, Coalinga and Patton State Hospitals.⁶ State hospitals provide inpatient treatment services for Californians with serious mental illnesses. These services include treatment for individuals found to have a severe mental

disorder for whom the Department provides inpatient treatment⁷ and for individuals committed to the Department as a result of pleading not guilty by reason of insanity.⁸

The right of MDOs to refuse antipsychotic medications is established in *Qawi*. A similar right for NGIs is discussed in *In re Locks* (2000) 79 Cal.App.4th 890. Special Order No. 339 requires all state hospitals to establish specific procedures when limiting this right to refuse antipsychotic medications and administering the medications involuntarily. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. MDOs and NGIs are committed to the Department for treatment and can be distinguished from other patients of the hospitals. MDOs and NGIs are clearly identified classes of persons. Additionally, Special Order No. 339 requires state hospital staff to develop and enforce the procedures for the involuntary administration of antipsychotic medication. State hospital staff is also a clearly defined class of persons. The first element is, therefore, met.

The second element established in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

As noted above, Welfare and Institutions Code section 4100 states that the Department has jurisdiction over all state hospitals. Welfare and Institutions Code section 4101 requires all of the institutions under the jurisdiction of the Department to be governed by uniform rule and regulation of the Department. In addition Penal Code sections 2960 through 2980 require the Department to provide treatment services to MDOs and Penal Code sections 1026 through 1027 require the Department to provide treatment services to NGIs.

Special Order No. 339 requires each state hospital that provides treatment to MDOs and NGIs to adopt specific requirements and procedures. These specific requirements and procedures include the procedures for determining when to administer antipsychotic medication without the individual’s consent, the review process for this determination and the referral of an individual to a court if necessary. By establishing these requirements and procedures, Special Order No. 339 implements, interprets and makes specific Welfare and Institutions Code sections 4100 and 4101 and Penal Code sections 2960 and following and 1026 and following.

The second element in *Tidewater* is, therefore, met.

Having met both elements of *Tidewater*, OAL determines that Special Order No. 339 meets the definition of “regulation” in Government Code section 11342.600.

⁷ Penal Code sections 2960 through 2980.

⁸ Penal Code sections 1026 through 1027.

⁶ Welfare and Institutions Code section 4100.

The final issue to examine is whether Special Order No. 339 falls within an exemption from the APA. Government Code section 11346 requires that an exemption from the APA must be an express statutory exemption. We can find no express APA exemptions that would apply to Special Order No. 339.

AGENCY RESPONSE

In its response, the Department argues that Special Order No. 339 is not subject to the requirements of the APA because:

1. Special Order No. 339 restates *Qawi* and therefore is exempt from the APA because it falls under the “only legally tenable interpretation” exemption. As part of this argument, the Department states that the Special Order is seeking to protect and enforce the rights of MDOs and NGIs by ensuring that the hospitals’ staff is aware of the rights set forth in the Penal Code and *Qawi*.
2. Special Order No. 339 is exempt from the APA because it falls under the “internal management” exemption.

Restatement of Law

In its response, the Department first argues that Special Order No. 399 **restates** *Qawi* and is therefore exempt from the APA because it falls under the “only legally tenable interpretation” exemption from the APA. Before we discuss the “only legally tenable interpretation” exemption, we must address this common misunderstanding of the difference between a “restatement” and the “only legally tenable interpretation” of a provision of law. A restatement of law is not an exemption from the APA; rather, it merely repeats the law and does not further implement, interpret or make specific any provision of law. It does not meet the second element of *Tidewater*, and therefore, does not meet the definition of “regulation” in Government Code section 11342.600. Thus, a rule that restates the law does not need to be adopted pursuant to the APA.

In our review of Special Order No. 339, we note that some of the provisions are restatements of existing provisions of law. Special Order No. 339 correctly states that the *Qawi* decision addresses the rights of MDOs to refuse antipsychotic medications. It also restates Welfare and Institutions Code section 5008(m) giving state hospitals the right to prescribe antipsychotic medication in emergency situations.

We can identify no other provisions of Special Order No. 339 that restate other provisions of existing law.

Only Legally Tenable Interpretation Exception

The only legally tenable interpretation exemption is established in Government Code section 11340.9(f). A rule that falls within this exemption is not a mere restatement, but rather the rule interprets a statute in the only way legally possible. The California Supreme

Court discussed the “only legally tenable interpretation” exception in *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 328, 132 P.3d 249. The court stated:

. . . the exception for the lone “legally tenable” reading of the law applies only in situations where the law “can reasonably be read only one way” (1989 Off. Admin. Law Determination No. 15, Cal. Reg. Notice Register 89, No. 44–Z, pp. 3122, 3124), such that the agency’s actions or decisions in applying the law are essentially rote, ministerial, or otherwise patently compelled by, or repetitive of, the statute’s plain language. (See Cal. Law Revision Com. com., 32D West’s Ann. Gov.Code (2005 ed.) foll. § 11340.9, p. 94; 1989 Off. Admin. Law Determination No. 15, Cal. Reg. Notice Register 89, No. 44–Z, pp. 3124–3131 [reviewing an agency interpretation of the law for compliance with the APA and concluding that although the agency had a “well-supported” rationale for its view, its was not the only legally tenable interpretation of the pertinent statute].)

Qawi establishes that MDOs have the right to refuse antipsychotic medications. *Qawi* states at pages 27–28:

We therefore hold that an MDO can be compelled to be treated with antipsychotic medication under the following nonemergency circumstances: (1) he is determined by a court to be incompetent to refuse medical treatment; (2) the MDO is determined by a court to be a danger to others within the meaning of Welfare and Institutions Code section 5300. [Footnote omitted] *An MDO’s right to refuse such medication may also be limited pursuant to State Department of Mental Health regulations modifying the MDO’s rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held.* [Footnote omitted] A determination that a patient is incompetent to refuse medical treatment, or is dangerous within the meaning of section 5300, may be adjudicated at the time at which he or she is committed or recommitted as an MDO, or within the commitment period. (Emphasis added.)⁹

⁹ Welfare and Institutions Code section 5300 is found in the Lanterman–Petris–Short (LPS) Act. (Welfare and Institutions Code section 5000 and following.) The LPS Act provides for the prompt evaluation and treatment of mentally disordered persons, developmentally disabled persons and persons impaired by chronic alcoholism, while protecting public safety and safeguarding individual rights through judicial review. Section 5300 establishes the time frames for making determinations that a person committed pursuant to the LPS Act is dangerous and must continue to be treated intensively. Section 5300 provides that, after an initial 14–day period of intensive treatment, the person may be confined for an additional 180 days if the person is found to be dangerous.

Qawi does not require any specific procedures to be used to safeguard the MDOs right to refuse antipsychotic medication. It only establishes the right to make the refusal. *Qawi* specifically states that the right to refuse antipsychotic medication may be limited by the Department in regulation. By adopting the specific procedures to be used to protect the right of the MDO to refuse antipsychotic medication, Special Order No. 339 interprets, implements and makes specific the holding of *Qawi* and is not a mere restatement.

Special Order No. 339 is not a Departmental action that is “essentially rote, ministerial, or otherwise patently compelled by, or repetitive of, the statute’s plain language.” The Department could have protected the MDO’s rights established in *Qawi* in many different ways. In Special Order No. 339, the Department has used its discretion to make choices about how to implement *Qawi*. As noted above, the court in *Qawi* specifically recognized that “[a]n MDO’s right to refuse such medication may also be limited pursuant to State Department of Mental Health regulations modifying the MDO’s rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held.”¹⁰ The requirements and procedures established by Special Order No. 339 are not the only legally tenable interpretation of existing provisions of law.

Special Order No. 339, therefore, is neither a restatement nor the only legally tenable interpretation of *Qawi*.

We also note that *Qawi* concerned only MDOs. By expanding *Qawi* to NGIs, the Department is further implementing, interpreting and making specific *Qawi*, not merely restating it.

Internal Management Exception

In its second argument, the Department states that Special Order No. 339 is exempt from the APA because it falls under the “internal management” exception.

Government Code section 11340.9(d) exempts from compliance with the APA any rule that “relates only to the internal management of the state agency.” This exemption from the APA has been construed very narrowly. The California Court of Appeal in *Grier v. Kizer* summarizes case law on internal management, stating:

Armistead v. State Personnel Board [citation] determined that an agency rule relating to an employee’s withdrawal of his resignation did not fall within the internal management exception. The Supreme Court reasoned the rule was ‘designed for use by personnel officers and their colleagues in the various state agencies throughout the state. It interprets and implements [a board rule]. It concerns termination of employment, a

matter of import to all state civil service employees. It is not a rule governing the board’s internal affairs. [Citation.] “Respondents have confused the internal rules which may govern the department’s procedure ... and the rules necessary to properly consider the interests of all ... under the ... statutes” [Fn. omitted.] ... [Citation; emphasis added by *Grier* court.]

Armistead cited *Poschman v. Dumke* [citation], which similarly rejected a contention that a regulation related only to internal management. The *Poschman* court held: “Tenure within any school system is a matter of serious consequence involving an important public interest. The consequences are not solely confined to school administration or affect only the academic community.” . . . [Citation.]

Relying on *Armistead*, and consistent therewith, *Stoneham v. Rushen* [citation] held the Department of Corrections’ adoption of a numerical classification system to determine an inmate’s proper level of security and place of confinement ‘extend[ed] well beyond matters relating solely to the management of the internal affairs of the agency itself [.]’ and embodied ‘a rule of general application significantly affecting the male prison population’ in its custody.

By way of examples, the above mentioned cases disclose that the scope of the internal management exception is narrow indeed. This is underscored by *Armistead’s* holding that an agency’s personnel policy was a regulation because it affected employee interests. Accordingly, even internal administrative matters do not per se fall within the internal management exception . . .¹¹

The internal management exemption has been judicially determined to be narrow in scope.¹² The courts apply the internal management exemption if the “regulation” at issue (1) affects only the employees of the issuing agency,¹³ and (2) does not address a matter of serious consequence involving an important public interest.¹⁴ In order for a rule or procedure to fall within the internal management exemption, it must meet both of these two prongs.

¹¹ *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 436, 268 Cal.Rptr. 244, 252–253.

¹² *Id.*

¹³ See *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 149 Cal.Rptr. 1; *Stoneham v. Rushen (Stoneham I)* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130; *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596.

¹⁴ See *Poschman, supra*, 31 Cal.App.3d at 943, 107 Cal.Rptr. at 603; and *Armistead, supra*, 22 Cal.3d at 203–204, 149 Cal.Rptr. at 3–4.

¹⁰ *Qawi, supra* at page 28.

Special Order No. 339 fails to meet the first prong because its effect is not limited to the employees of the Department; it also affects MDOs or NGIs who refuse antipsychotic medications. Because Special Order No. 339 does not meet the first prong of the “internal management” exemption, there is no need to discuss or analyze the second prong. Therefore, Special Order No. 339 does not fall within the internal management exemption.

CONCLUSION

OAL finds that Special Order No. 339 is a “regulation” as defined in section 11342.600, does not fall within any express statutory APA exemption, and therefore, it should have been adopted pursuant to the APA.

Date: December 12, 2008

/s/
Susan Lapsley
Director

/s/
Kathleen Eddy
Senior Counsel
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

**Attachment #1
Special Order No. 339**

CALIFORNIA DEPARTMENT OF
MENTAL HEALTH

SPECIAL ORDER

Section 300–399: Forensic

Special Order Number: 339 Effective Date:
Replaces: New (Rescinds 336.01) October 22, 2007

Subject: **INVOLUNTARY ADMINISTRATION OF ANTIPSYCHOTIC MEDICATION TO MENTALLY DISORDERED OFFENDER INDIVIDUALS (PENAL CODE 2962 AND 2972) AND NOT GUILTY BY REASON OF INSANITY INDIVIDUALS (PENAL CODE 1026)**

Special Order: The California Supreme Court Qawi Decision (32 Cal.4th 1) addressed the rights of individuals committed to a State Hospital as Mentally Disordered Offenders (MDO), under Sections 2962 and 2972

of the Penal Code, to refuse antipsychotic medication, but permitted the government to involuntarily administer antipsychotic medications to individuals, under specified circumstances. At the same time, the Court, in the same decision, indicated that individuals committed to a State Hospital as Not Guilty by Reason of Insanity (NGI), under Section 1026 of the Penal Code, would be found to have the same rights regarding involuntary administration of antipsychotic medication.

Therefore, State Hospitals are directed to establish procedures and policies consistent with the California Supreme Court Qawi Decision, and Section 5300 of the Welfare and Institutions Code, for both MDO and NGI individual commitments.

This Special Order pertains to authority for the administration of antipsychotic medication only and does not include medication or treatment for physical health conditions of civilly committed individuals. Authority for the treatment of physical health conditions of a civilly committed individual will follow the procedures described within Section 3200 of Division 4 of the Probate Code.

Authority: By order of the Deputy Director, Long Term Care Services, consistent with the California Supreme Court Qawi Decision, Sections 2962 and 2972 of the Penal Code, Section 1026 of the Penal Code, and Sections 5300 and 5008(m) of the Welfare and Institutions Code.

Purpose: To provide the State Hospitals with uniform direction in the process of seeking authority for involuntary administration of antipsychotic medication for individuals committed to a State Hospital as MDO (Penal Code Sections 2962 and 2972), and for individuals committed as NGI (Penal Code Section 1026), who refuse to give consent to take prescribed antipsychotic medication.

Method: It is the responsibility of all treating psychiatrists and physicians to provide individuals with the education and information they need as to the overall benefits and risks of taking prescribed antipsychotic medication. This education is focused not only on medication, but to encourage an individual’s participation in all aspects of his/her treatment plan. If, after all attempts at education and encouragement, the individual refuses antipsychotic medication, the following procedures shall be followed.

Administration of Antipsychotic Medication to MDO and NGI Individuals in a Psychiatric Emergency:

As defined in Section 5008(m) of the Welfare and Institutions Code, the State Hospitals can legally prescribe antipsychotic medication to individuals under psychiatric emergency situations, including for the

preservation of life or the prevention of serious bodily harm to the individual and/or others.

Existing policies and procedures for emergency administration, if consistent with the following principles, may be relied upon:

- An emergency situation is defined as when an individual is considered or becomes an imminent danger to self and/or others as a result of mental disease, defect, or disorder.
- Emergency medication administration is considered to be an emergency as long as, but only as long as, the psychiatric emergency continues to exist. Once the emergency is over medication should cease unless the individual voluntarily consents to treatment.
- It is not necessary for harm to take place or become unavoidable prior to the administration of antipsychotic medication or treatment.
- Antipsychotic medication shall be provided in the manner least restrictive to the personal liberty of the individual.

Interim Authority for Involuntary Medication for Purposes Such as Danger to Self and/or Others:

MDO and NGI individuals who are mentally ill and dangerous to self and/or others may be referred to a medical Antipsychotic Medication Review panel to determine the necessity for antipsychotic medication. The panel will consist of a presiding Psychiatrist, a second Psychiatrist, and a Clinical Psychologist. None of the members of the Antipsychotic Medication Review panel are to be directly involved with the individual's treatment. A Social Worker or Nurse who will act as the individual's advocate and who will represent the individual's interests at the hearing, will explain the procedure and findings to the individual, and assist with a writ to State Court if the individual so desires. At least two (2) of the three (3) members of the panel must find that the individual meets criteria for involuntary antipsychotic medication, which may then be ordered for 14 days. At the end of the 14-day period, the panel will review the treatment outcome and may order continued treatment for up to 180 days. After 180 days a new hearing is required to consider the need for continued treatment.

Long Term Authority for Involuntary Medication for Non-Emergency Circumstances:

The *Qawi* decision indicates that MDO and NGI individuals can be compelled to be treated with psychotropic medication in non-emergency situations only if:

- The individual has been determined by a court to be incompetent, or,
- The MDO or NGI individual is determined by a court to be a danger to self and/or others within the meaning of Section 5300 of the Welfare and Institutions Code.

If an MDO or NGI individual has been referred to the Antipsychotic Medication Review panel for the interim administration of antipsychotic medication, the State Hospitals are concurrently directed to file a petition, along with a sample court order, with the court (see Attachments A and B). Copies of the petition are to be sent to the attorneys of record. The petition must be signed by the treating Psychiatrist and the Medical Director of the facility, attesting to the fact that the individual is either incompetent or the individual is a danger to self and/or others, and therefore requests the court for an order for involuntary medication.

A determination that an individual is incompetent to refuse medical treatment, or is a danger to self and/or others within the meaning of Section 5300 of the Welfare and Institutions Code, may be adjudicated at the time of which he or she is committed or recommitted as a MDO individual, or a NGI patient, or within the committing period.

For convenience and efficiency, when possible, the need for involuntary antipsychotic medication should be addressed to the court when commitment or recommitment or other court proceedings are already scheduled. However, referral to the Antipsychotic Medication Review Panel and the concurrent filing of a petition with the court should not be delayed to wait for the next court proceedings to be held when this would result risk of harm to the individual and/or others.

SIGNATURE ON FILE

CYNTHIA A. RADAVSKY, Deputy Director
Long Term Care Services
Department of Mental Health

October 22, 2007

Date

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-1114-01
BOARD OF FORESTRY AND FIRE PROTECTION
 Proposed Revisions To Address Inconsistencies in
 Rules Pertaining to Filing Locations

This non-sub adds the term CAL FIRE Review Team Office to the definition section Title 14 section 895.1. This term replaces the term "regional office" throughout CAL FIRE's regulations. Other changes include adding the statutory definition of "District" and making grammatical corrections.

Title 14
 California Code of Regulations
 ADOPT: 1032 AMEND: 895, 895.1, 929.1, 949.1,
 969.1, 1032.7, 1032.9, 1037.3, 1054.5, 1055.3,
 1056.3, 1090.1, 1090.2, 1090.4, 1090.6, 1090.17,
 1092.03, 1092.04, 1092.06, 1092.18, 1104.3 RE-
 PEAL: 1032
 Filed 12/17/2008
 Agency Contact:
 Christopher Zimny (916) 653-9418

File# 2008-1114-06
BOARD OF OCCUPATIONAL THERAPY
 Ethical Standards of Practice

This amendment to Title 16 section 4170 requires occupational therapy practioners to report ". . . acts constituting grounds for discipline" instead of merely ". . . unprofessional conduct." Essentially this change extends the requirement to include all items listed in B&P Code section 2570.28 instead of just the items that fall under unprofessional conduct.

Title 16
 California Code of Regulations
 AMEND: 4170
 Filed 12/17/2008
 Effective 01/16/2009
 Agency Contact: Heather Martin (916) 263-2294

File# 2008-1103-01
BUREAU OF AUTOMOTIVE REPAIR
 Licensing of Smog Check Technicians

This action updates and streamlines the initial licensing and renewal process for various Smog Check Technician licenses (Intern Technician; Basic Area Technician; Advanced Emission Specialist Technician).

Title 16
 California Code of Regulations
 AMEND: 3340.28, 3340.29
 Filed 12/18/2008
 Effective 01/17/2009
 Agency Contact: Virginia Vu (916) 255-2135

File# 2008-1104-01
**DEPARTMENT OF CORRECTIONS AND
 REHABILITATION**
 Temporary Detention of Parolees

This filing is submitted as a change without regulatory effect to repeal sections 4826 and 4985 of title 15 of the California Code of Regulations relating to the temporary detention of parolees pursuant to the ruling of the United States District Court, Eastern District for California, in the case of L.H. v. Schwarzenegger.

Title 15
 California Code of Regulations
 REPEAL: 4826, 4985
 Filed 12/19/2008
 Agency Contact: Sonja A. Dame (916) 445-2180

File# 2008-1216-01
DEPARTMENT OF FOOD AND AGRICULTURE
 Mexican Fruit Fly Interior Quarantine

This emergency regulatory action will add approximately 70 square miles in the Azusa area of Los Angeles County to the quarantine area for the Mexican fruit fly.

Title 3
 California Code of Regulations
 AMEND: 3417(b)
 Filed 12/18/2008
 Effective 12/18/2008
 Agency Contact:
 Stephen S. Brown (916) 654-1017

File# 2008-1216-02
DEPARTMENT OF FOOD AND AGRICULTURE
 Mediterranean Fruit Fly Interior Quarantine

This emergency regulatory action will expand the existing quarantine area (approximately 107 square miles) in San Diego County by approximately 32 square miles for a total of 139 square miles surrounding the Mediterranean fruit fly infestation in the El Cajon area of San Diego County.

Title 3
 California Code of Regulations
 AMEND: 3406(b)
 Filed 12/18/2008
 Effective 12/18/2008
 Agency Contact:
 Stephen S. Brown (916) 654-1017

File# 2008-1113-02
DEPARTMENT OF INDUSTRIAL RELATIONS
 Labor Compliance Programs

The laws regulating public works projects require among other things that contractors and subcontractors

pay employees not less than the prevailing wage rates as determined under the Labor Code. These laws are enforced by the State Labor Commissioner and by state and local agencies operating their own labor compliance programs. A number of state laws adopted in the past seven years require local agencies and school districts to establish and enforce a labor compliance program as a condition for obtaining certain construction bond funds or for exercising specified contractual authority. In 2004, the Labor Compliance Program regulations were amended to address new statutory requirements and other changes governing prevailing wage enforcement. However, certain proposals from that rulemaking were withdrawn in order to allow for more study and discussion with interested persons. This regulatory action puts forth revised proposals covering those subjects and other matters suggested both by the public and the Department's own regulatory experience.

Title 8

California Code of Regulations

ADOPT: 16404, 16430, 16435.5 AMEND: 16421, 16422, 16423, 16424, 16425, 16426, 16427, 16428, 16429, 16431, 16432, 16434, 16435, 16436, 16437, 16439

Filed 12/22/2008

Effective 01/21/2009

Agency Contact: John Cumming (415) 703-4265

File# 2008-1125-08

NEW MOTOR VEHICLE BOARD

Arbitration Certification Program — Fee Collection

This filing revises the fee necessary to fully fund the Arbitration Certification Program pursuant to the formula set forth in section 553.70 of title 13 of the California Code of Regulations to \$.566 per new motor vehicle sold in calendar year 2007.

Title 13

California Code of Regulations

AMEND: 553.70

Filed 12/22/2008

Agency Contact:

Dawn K. Kindel (916) 445-1888

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN July 23, 2008 TO
December 24, 2008**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted

by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

- 12/15/08 AMEND: 17463, 17470, 17519
- 12/09/08 ADOPT: 25100
- 12/08/08 AMEND: 1700
- 11/03/08 AMEND: 647.1, 647.2, 647.3, 647.20, 647.20.1, 647.21, 647.22, 647.23, 647.24, 647.25, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.36, 648.1, 648.3, 648.5, 649.20, 649.21
- 10/31/08 AMEND: 18545, 18703.4, 18730, 18940.2, 18942.1, 18943
- 10/31/08 ADOPT: 18402.1 AMEND: 18427
- 10/22/08 ADOPT: 59600
- 10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03
- 10/20/08 ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127
- 09/04/08 ADOPT: 18530.45
- 09/04/08 AMEND: 18946.4
- 08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129
- 08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905

Title 3

- 12/18/08 AMEND: 3417(b)
- 12/18/08 AMEND: 3406(b)
- 12/16/08 AMEND: 1358(b)
- 12/12/08 AMEND: 3434(b)
- 12/10/08 AMEND: 3589
- 12/04/08 AMEND: 3435(b)
- 11/26/08 AMEND: 3406(b)
- 11/20/08 ADOPT: 6400
- 11/12/08 AMEND: 3591.5(a)
- 11/12/08 AMEND: 3434(b)
- 11/07/08 AMEND: 3433(b)
- 10/30/08 ADOPT: 1430.142 AMEND: 1430.43 REPEAL: 1430.44.5
- 10/29/08 AMEND: 3435(b)
- 10/28/08 ADOPT: 3408
- 10/22/08 AMEND: 3700(c)
- 10/20/08 AMEND: 3433(b)
- 10/20/08 AMEND: 3434(b)
- 10/17/08 AMEND: 3423(b)
- 10/15/08 AMEND: 3433(b)
- 10/14/08 AMEND: 3434(b)
- 10/14/08 AMEND: 3423(b)
- 10/01/08 AMEND: 3434(b)

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09/24/08	AMEND: 810.1 REPEAL: 810	12200.13,	12200.14,	12200.16,
09/23/08	AMEND: 3591.20(a)	12200.17,	12200.18,	12200.20,
09/23/08	AMEND: 3434(b)	12200.21,	12201,	12202,
09/18/08	AMEND: 3591.20(a)	12203,	12203A,	12203.1,
09/17/08	AMEND: 3435(b)	12203.2,	12203.3,	12203.5,
09/11/08	AMEND: 3591.20(a)	12204,	12205,	12205.1,
09/10/08	AMEND: 3434	12218,	12218.1,	12218.5,
09/05/08	ADOPT: 3435	12218.7,	12218.11,	12220,
09/03/08	AMEND: 6452.2	12220.3,	12220.13,	12220.14,
09/02/08	AMEND: 3433(b)	12220.16,	12220.18,	12220.20,
09/02/08	AMEND: 3591.6(a)	12220.20A,	12220.21,	12220.23,
08/26/08	AMEND: 3434(b)	12221,	12222,	12223,
08/25/08	AMEND: 3423(b)	12224,	12225,	12225.1,
08/18/08	AMEND: 6738, 6739	12233,	12234,	12235,
08/18/08	AMEND: 3434(b)	12236,	12300,	12301,
08/13/08	AMEND: 3434(b)	12301.1,	12302,	12303,
08/12/08	AMEND: 3406(b)	12304,	12305,	12306,
08/11/08	AMEND: 3406(b)	12308,	12309,	12310,
08/01/08	AMEND: 3589(a)	12335,	12341,	12342,
08/01/08	ADOPT: 3591.22	12343,	12344,	12345,
07/28/08	AMEND: 3434(b)	12347,	12358,	12359,
07/25/08	AMEND: 902.9	12370,	12400,	12401,
07/24/08	ADOPT: 3591.21	12402,	12403,	12404,
		12405,	12460,	12463,
		12464,	12466,	12550,
		12552,	12554,	12556,
		12558,	12560,	12562,
		12564,	12566,	12568,
		12590		
		08/04/08	AMEND: 1843.2	
		Title 5		
		12/09/08	ADOPT: 18131.1	AMEND: 18131
		11/06/08	AMEND: 42723	
		10/17/08	ADOPT: 100000,	100001,
			100002,	100003,
			100004,	100005,
			100006,	100007,
			100008,	100009,
			100010,	100011,
			100012,	100013,
			100014,	100015
		10/14/08	ADOPT: 42729	
		09/10/08	AMEND: 41000	
		09/09/08	ADOPT: 19828.3,	19837.2
			AMEND: 19816,	19816.1,
			19828.2,	19837.1,
			19846	
		08/11/08	AMEND: 41000	
		08/04/08	ADOPT: 15575,	15576,
			15577,	15578
		Title 8		
		12/22/08	ADOPT: 16404,	16430,
			16435.5	AMEND: 16421,
			16422,	16423,
			16424,	16425,
			16426,	16427,
			16428,	16429,
			16431,	16432,
			16434,	16435,
			16436,	16437,
			16439	
		12/02/08	AMEND: 2940.6,	Appendix C
		12/01/08	AMEND: 5198(f)(2)(A)	
		11/19/08	AMEND: 1658(p)	
		11/17/08	ADOPT: 10116,	10116.1,
			10116.2,	10116.3,
			10116.5,	10116.6,
			10116.7,	10116.8
			AMEND: 10123.1	renumbered
			to 10116.4,	10001
			renumbered	to 10117,
			10002	renumbered
			to 10118,	10004
			renumbered	to 10119,
			10005	renumbered
			to 10120,	10123,
			10127,	10127.1,
			10128,	

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 1-Z

	10133.13, 10133.14, 10133.16, 10133.22, 10133.53, 10133.54, 10133.55, 10133.56, 10133.57, 10133.58 REPEAL: 10133.3, 10133.50	08/04/08 AMEND: Appendix C following section 560, Appendices A, B, and C following section 1938, and section 5001
11/17/08	ADOPT: 10210, 10211, 10212, 10213, 10214, 10215, 10216, 10217, 10218, 10222, 10223, 10225, 10227, 10228, 10229, 10230, 10232, 10232.1, 10232.2, 10233, 10236, 10240, 10241, 10243, 10244, 10245, 10246, 10250, 10250.1, 10251, 10253, 10253.1, 10254, 10256, 10260, 10270, 10271, 10272, 10273, 10275, 10280, 10281, 10290, 10291, 10293, 10294, 10294.5, 10295, 10296, 10297 AMEND: 10252, 10252.1 REPEAL: 10250	07/30/08 AMEND: 1524
		Title 9
11/17/08	ADOPT: 10150.1, 10150.2, 10150.3, 10150.4, 10151, 10151.1, 10166.1 AMEND: 10150, 10160, 10160.1, 10160.5, 10161, 10161.1, 10162, 10164, 10165, 10166, 10167 REPEAL: 10168	11/18/08 ADOPT: 9550
		Title 10
11/17/08	ADOPT: 10397, 10403, 10409, 10508, 10550, 10593, 10603, 10629, 10770.5, 10770.6, 10782, 10785, 10844, 10845 AMEND: 10301, 10302, 10324, 10346, 10400, 10410, 10411, 10412, 10450, 10500, 10505, 10507, 10510, 10541, 10561, 10589, 10608, 10616, 10626, 10750, 10751, 10753, 10754, 10755, 10770, 10779, 10840, 10842, 10843, 10846, 10848, 10850, 10860, 10865, 10866, 10946, 10950, 10953 REPEAL: 10306, 10308, 10347, 10390, 10391, 10392, 10395, 10396, 10414, 10415, 10416, 10417, 10514, 10520, 10548, 10555, 10563, 10590, 10591, 10592, 10610, 10630, 10758, 10762, 10771, 10867, 10890, 10952, 10955, 10957, 10995, 10996	12/02/08 AMEND: 2652.1 11/12/08 AMEND: 2498.4.9 11/12/08 AMEND: 2498.4.9 11/07/08 AMEND: 2498.5 11/03/08 AMEND: 2498.5 09/22/08 AMEND: 2699.6500, 2699.6803, 2699.6805 09/15/08 AMEND: 2699.6619, 2699.6700, 2699.6703, 2699.6705, 2699.6709, 2699.6711, 2699.6713, 2699.6715, 2699.6717, 2699.6721, 2699.6723, 2699.6725 09/11/08 AMEND: 2330.1 08/15/08 ADOPT: 2844 AMEND: 2840, 2842 08/14/08 AMEND: 2699.100, 2699.201, 2699.205, 2699.207, 2699.209, 2699.400 08/04/08 AMEND: 5000, 5110, 5111, 5112, 5113, 5114, 5116, 5117 REPEAL: 5119 07/30/08 AMEND: 2498.6 07/24/08 AMEND: 2498.4.9 07/23/08 AMEND: 2498.4.9 07/23/08 AMEND: 2498.4.9
11/12/08	AMEND: 15600, 15601, 15602, 15603, 15604, 15605, 15606, 15607, 15611	Title 11
11/06/08	AMEND: 2540.8, 2540.9, 2548.23, 2719, 2740, 2741, 2880, 2980	12/02/08 AMEND: 1005, 1007, 1008 11/07/08 AMEND: 1005, 1081 10/27/08 AMEND: 1005, 1007, 1008, 1052 10/16/08 AMEND: 1081 10/14/08 AMEND: 1005 10/02/08 AMEND: 1003, 9040, 9041, 9073(b) 10/02/08 AMEND: 1081 09/23/08 ADOPT: 44.3
10/01/08	AMEND: 3412, 3413, 3414, 3416	Title 13
09/23/08	AMEND: 5155	12/22/08 AMEND: 553.70 12/05/08 AMEND: 110.04 12/01/08 AMEND: 1956.8 11/24/08 ADOPT: 2027 11/03/08 AMEND: 25.06, 25.07, 25.08, 25.09, 25.10, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22 10/20/08 ADOPT: 346.00, 346.02, 346.04, 346.06, 346.08, 346.10, 346.12, 346.14, 346.16 10/07/08 AMEND: 935 10/02/08 AMEND: 423.00 10/02/08 AMEND: 15.00, 15.03 09/08/08 AMEND: 2449
09/22/08	ADOPT: 1530.1	
09/17/08	AMEND: 1512	
08/26/08	AMEND: 5168, 6775	
08/25/08	ADOPT: 9721.11, 9721.12, 9721.13, 9721.14, 9721.21, 9721.33 AMEND: 9720.1, 9720.2, 9721.1, 9721.2, 9721.31, 9721.32, 9722, 9722.1, 9722.2, 9723	
08/08/08	AMEND: 1532.1	
08/04/08	AMEND: 3649	

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08/29/08	ADOPT: 2660(a)(0.5), 2260(a)(0.7), 2260(a)(6.9), 2260(a)(7.5), 2260(a)(8.5), 2260(a)(10.5), 2260(a)(10.7), 2260(a)(19.7), 2260(a)(19.8), 2260(a)(23.5), 2260(a)(23.7), 2260(a)(37), 2260(a)(38), 2260(a)(39), 2262.3(d), 2264.2(a)(3), 2264.2(b)(5), 2264.2(d), 2265(c)(4), 2265.1, 2265.5, 2266(b)(3), 2266(b)(4), 2266(b)(5)	28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, 28.58
		08/18/08 AMEND: 749.3
		08/14/08 ADOPT: 3950, 3951, 3952, 3953, 3954, 3955, 3956, 3957, 3958, 3959, 3960, 3961, 3962, 3963, 3964, 3965
		08/12/08 ADOPT: 124
		08/11/08 AMEND: 503
		08/06/08 AMEND: 815.05, 818.02, 825.05, 827.02
		07/28/08 AMEND: 702
		07/23/08 AMEND: 7.50
08/13/08	ADOPT: 619.2 AMEND: 615, 615.1, 616, 617, 618, 619, 619.1	
Title 13, 17		
12/03/08	AMEND: 2299.3, 93118.3	
10/20/08	ADOPT: 2299.5, 93118.5	
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12/17/08	ADOPT: 1032 AMEND: 895, 895.1, 929.1, 949.1, 969.1, 1032.7, 1032.9, 1037.3, 1054.5, 1055.3, 1056.3, 1090.1, 1090.2, 1090.4, 1090.6, 1090.17, 1092.03, 1092.04, 1092.06, 1092.18, 1104.3 REPEAL: 1032	
12/11/08	AMEND: Division 5, Appendix M	
12/10/08	ADOPT: 120.1, 120.2 AMEND: 120, 120.3 REPEAL: 120.01	
11/26/08	AMEND: 1257	
11/24/08	AMEND: 749.3	
11/13/08	ADOPT: 18660.40	
11/07/08	AMEND: 895.1, 919.9, 939.9	
11/07/08	AMEND: 1038(i)	
11/07/08	AMEND: 895.1, 898, 914.8, 916, 916.2, 916.9, 916.11, 916.12, 923.3, 923.9, 934.8, 936, 936.2, 936.9, 936.11, 936.12, 943.3, 943.9, 954.8, 956, 956.2, 956.9, 956.11, 956.12, 963.3, 963	
10/30/08	AMEND: 29.85	
10/23/08	AMEND: 163, 164	
10/22/08	AMEND: 1052.4	
10/21/08	AMEND: 15387 Appendix C	
10/09/08	AMEND: 791, 791.7, 795	
09/22/08	AMEND: 4900 REPEAL: 4901, 4902, 4903, 4904	
09/15/08	AMEND: 502	
09/11/08	AMEND: 10310, 10360, 10810, 10820, Appendix D, Appendix F	
09/09/08	ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5, 17987.6	
09/04/08	AMEND: 670.2	
08/27/08	AMEND: 300	
08/25/08	ADOPT: 27.32 AMEND: 27.20(f), 27.25, 27.30, 28.26, 28.27, 28.28, 28.29,	
		12/19/08 REPEAL: 4826, 4985
		12/16/08 ADOPT: 3099
		12/15/08 ADOPT: 3334 AMEND: 3000
		12/11/08 AMEND: 3323
		12/09/08 AMEND: 3000, 3001, 3041.3, 3075.3, 3294.5, 3356, 3369.5, 3370, 3376.1, 3382, 3383, 3393, 3401, 3402, 3405, 3406, 3407, 3408, 3410, 3411, 3414, 3430, 3432, 3433
		11/26/08 ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756, 1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792
		10/30/08 AMEND: 3000, 3375, 3376.1, 3379
		10/28/08 ADOPT: 3999.7
		10/23/08 ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461
		10/15/08 ADOPT: 3999.6
		09/15/08 ADOPT: 3269
		09/03/08 AMEND: 2253
		08/29/08 AMEND: 3000, 3261.1, 3261.2, 3261.4, 3261.5, 3261.7, 3267
		08/04/08 AMEND: 2041
		08/04/08 AMEND: 3000, 3005, 3006, 3008, 3009, 3011, 3012, 3013, 3015, 3016, 3290, 3310, 3313, 3314, 3315, 3317, 3318, 3320, 3323, 3327, 3328
		07/30/08 ADOPT: 3503, 3505, 3506, 3507, 3508, 3509, 3510, 3511, new Article 2 and title, 3520, 3521, 3521.1, 3521.2, 3521.3, 3521.4, 3521.5, 3521.6, 3522, 3523, 3524, 3525, 3526, 3527, new Article 3 and title, 3540, 3541, 3542, 3543, 3544, 3545, 3546, 3547, 3548, 3549, new Article 4 and title, 3560, 3561, 3562, 3563, 3564, new Article 5 and title, 3570, 3571, new Article 6 and title, 3580, 3581, 3582, new Article 7 and title, new Article 8 and title, new Article 9 and title,

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new Article 10 and title, new Article 12 and title, 3640, new Article 13 and title, 3650, 3651, 3652, 3652.1, 3653, 3654, new Article 14 and title, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, new Article 15 and title, 3720, 3721, 3721.1, 3722, 3723, new Article 16 untitled, 3730, new Article 17 and title, new Article 18 and title, 3750, 3751, 3752, 3753, 3754, 3755, 3756, new Article 19 and title, 3760, 3761, 3762, 3763, 3764, 3765, 3766, new Article 20 and title, 3770, 3771, and 3772. AMEND: 3604, 3605, 3605.5, 3701.1, 3705, 3706, 3801, 3802, renumber old Article 2 with title, and 3815.

Title 16

12/18/08 AMEND: 3340.28, 3340.29
 12/17/08 AMEND: 4170
 12/11/08 AMEND: 1336
 12/09/08 AMEND: 1399.25 REPEAL: 1399.26
 11/24/08 AMEND: 1419, 1419.1, 1419.3
 10/30/08 AMEND: 1399.571
 10/17/08 ADOPT: 1399.610, 1399.612 AMEND: 1399.502
 10/07/08 AMEND: 832.47
 10/02/08 AMEND: 3351.2
 09/29/08 AMEND: 2522, 2524, 2579, 2579.10 REPEAL: 2522.5, 2579.1
 09/22/08 AMEND: 4154, 4155
 09/19/08 AMEND: 11.5, 12, 12.5, 37, 87.1
 09/10/08 ADOPT: 1028.2, 1028.3, 1028.4, 1028.5 AMEND: 1021
 08/27/08 AMEND: 2250 REPEAL: 2274, 2277
 08/25/08 AMEND: 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, 1399.489.1
 08/15/08 AMEND: 1361
 08/13/08 AMEND: 3394.6
 08/12/08 AMEND: 3394.4
 08/07/08 AMEND: 4161
 07/30/08 AMEND: 2649
 07/23/08 AMEND: 1399.152.2, 1399.153, 1399.153.3

Title 17

12/02/08 ADOPT: 95100, 95101, 95102, 95103, 95104, 95105, 95106, 95107, 95108, 95109, 95110, 95111, 95112, 95113, 95114, 95115, 95125, 95130, 95131, 95132, 95133
 10/30/08 AMEND: 100407, 100408
 09/24/08 AMEND: 52082, 56103, 56104, 58670

09/18/08 ADOPT: 94800, 94801, 94802, 94803, 94804, 94805, 94806, 94807, 94808, 94809, 94810
 09/05/08 ADOPT: 98100 REPEAL: 96100
 08/06/08 AMEND: 94006

Title 18

12/01/08 AMEND: 1602.5
 11/14/08 AMEND: 1591, 1602
 09/24/08 AMEND: 1574
 09/24/08 AMEND: 1599
 08/11/08 AMEND: 1807, 1828
 08/05/08 AMEND: 3000

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11/14/08 AMEND: 2900, 2910, 2915, 2920, 2930, 2940, 2945, 2950, 2955, 2960, 2965, 2966, 2970, 2980
 09/24/08 AMEND: 560
 09/24/08 AMEND: 906.3
 08/07/08 ADOPT: 1980.00, 1980.01, 1980.02, 1980.03, 1980.04, 1980.05, 1980.06, 1980.07, 1990.00, 1990.01, 1990.02, 1990.03, 1990.04, 1990.05, 1990.06, 1990.07, 1990.08, 1990.09, 1990.10, 1990.11, 1990.12, 1990.13

Title 21

11/26/08 AMEND: 6633.2

Title 22

12/09/08 AMEND: 51521
 12/09/08 AMEND: 100031, 100032, 100033, 100034, 100035, 100036, 100037, 100038, 100039, 100040, 100042, 100043 REPEAL: 100041
 11/24/08 AMEND: 2706-1
 11/20/08 AMEND: 3254(i)-2
 11/13/08 ADOPT: 97234, 97267 AMEND: 97215, 97225, 97226, 97227, 97241, 97244, 97248
 11/06/08 AMEND: 2706-2, 3302-1, 3303.1(c)-1
 10/29/08 AMEND: 64413.1, 64414, 64431, 64432, 64432.2, 64432.8, 64433.3, 64445.1, 64447.2, 64482
 10/28/08 AMEND: 87102, 87105
 10/15/08 AMEND: 2051-3
 09/26/08 AMEND: 3258-1, 3267-1, 3267-2
 08/07/08 AMEND: 51098.5, 51202.5, 51309.5, 51503.3

Title 23

12/09/08 ADOPT: 3939.33
 12/01/08 ADOPT: 3949.6
 11/06/08 AMEND: 2200, 2200.4, 2200.5, 2200.6
 11/06/08 ADOPT: 3939.32
 11/05/08 AMEND: 1062, 1064, 1077, 3833.1
 10/22/08 ADOPT: 3989.7

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10/14/08 AMEND: 3939.19
10/06/08 AMEND: 3939.20
09/17/08 ADOPT: 3919.4

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12/05/08 ADOPT: 7150, 7151, 7152, 7153, 7154,
7155, 7156, 7157, 7158, 7159, 7160
10/08/08 AMEND: 4000, 4002, 4004, 4010, 4017,
4020, 4024, 4025, 4030, 4032, 4033,
4034.5, 4040, 4041, 4049.1, 4049.3,
4049.5, 4049.7, 4049.9, Appendix A
REPEAL: 4021, 4031.5, 4047, 4047.3,
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4670, 4680, 4800, Appendix RV-P-1

08/29/08 ADOPT: 4200, 4202, 4204, 4206, 4208,
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Title 27

12/02/08 AMEND: 25805(b)
09/05/08 AMEND: 25601
08/08/08 AMEND: 25705(b)

Title 28

09/15/08 ADOPT: 1300.71.39

Title MPP

09/29/08 ADOPT: 14-611, 14-915, 14-916
AMEND: 14-610
09/18/08 AMEND: DSS MPP 63-102, 63-504